

The Senator from Pennsylvania.

INDEPENDENT COUNSEL REFORM ACT OF 1999

Mr. SPECTER. Mr. President, I seek recognition today to join my colleagues Senators LEVIN, LIEBERMAN, and COLLINS in introducing the Independent Counsel Reform Act of 1999. Our bill would accomplish two important goals. First, it would reauthorize the institution of the independent counsel for another 5 years. Second, our bill would make significant changes to the existing independent counsel statute to correct a number of problems which have become clear to all of us during the course of the past few years.

Tomorrow, the independent counsel statute will sunset. The law is dying because there appears to be a consensus that it created more problems than it solved. Many of us have forgotten the very serious problems and conflicts that led us to pass the statute in the first place. Any problems with the law can be fixed, and our bill addresses the issues that have caused the most serious complaints. But it would be a serious error to eliminate the institution of the independent counsel.

Many years have passed since President Nixon's infamous Saturday Night Massacre. Yet it is important that we remember this episode because it is such a powerful reminder of why we passed the independent counsel statute and why the statute is still needed today.

Before there was an independent counsel, the Attorney General appointed special prosecutors under his control to conduct investigations of Presidents and other high ranking officials. After the Watergate break-in, Attorney General Elliot Richardson appointed Archibald Cox to serve as the Watergate Special Prosecutor. When President Nixon decided that Cox's investigation was getting too close to the truth, he sought to have Cox fired. The President was legally entitled to fire Cox, of course, since Cox was a Justice Department employee like any other. When Attorney General Elliot Richardson refused to fire Cox, Richardson was fired. When Deputy Attorney General William Ruckelshaus refused to fire Cox, Ruckelshaus was also fired. Finally, Solicitor General Robert Bork agreed to fire Cox.

After Archibald Cox was fired, the White House announced that the office of the Watergate special prosecutor was to be closed and the President's chief of staff sent the FBI to surround Cox's offices and seize the records he had compiled. Henry Ruth, an old friend of mine who was working at the time as Archibald Cox's top deputy, described the following scene in his testimony before the Governmental Affairs Committee on March 3 of this year:

In anticipation of adverse action, we had secured copies of key documents in secret locations around Washington, D.C. and even removed some key items from the office that Saturday night hidden in underwear and other unlikely locations. We did not know whether the military would raid our homes looking for documents. Unanimously, the staff of the Watergate prosecutor's office just refused to leave or to change anything we were doing unless someone physically removed us. And if an unprecedented 450,000 telegrams of spontaneous protest had not descended upon Washington, D.C. in the few days after that Saturday night, no one really knows if President Nixon would have succeeded in aborting the investigation. In other words, we do not feel that the Department of Justice was an adequate instrument for investigating the President and other high officials of government.

Eventually, as a result of these telegrams and enormous public pressure, Leon Jaworski was appointed as a special prosecutor and the Watergate investigation was continued. But this positive outcome was far from guaranteed. As Mr. Ruth reminded the committee, "it is impossible to describe how thin a thread existed at that time, and for three weeks, for the continuation of what was going on."

It was this dark episode, perhaps more than any other, which convinced the nation that the individual investigating the President must be truly independent of the President. This is a lesson we should have to learn only once. While recent independent counsels have made some mistakes, none of these mistakes are on the scale of a Saturday Night Massacre. With this history as our guide, let us move to fix the statute, not eliminate it.

Senators LEVIN, LIEBERMAN, COLLINS and I have all attended 5 very comprehensive hearings before the Senate Governmental Affairs Committee from February to April of this year. During these hearings, we heard from former independent counsels, former targets of independent counsels, judges on the special division of the court which appoints independent counsels, Independent Counsel Kenneth Starr and Attorney General Reno. The four of us have also met repeatedly to discuss what is wrong with the current law and how to fix it. The bill we introduce today incorporates many of the suggestions made during these hearings and corrects provisions in the bill which lead to the most serious complaints.

First of all, we all agreed that too many independent counsels have been appointed for matters which simply do not warrant this high level of review. For example, I believe that Attorney General Reno made a mistake when she asked for appointment of an independent counsel to investigate Secretary of Labor Alexis Herman. In Secretary Herman's case, there was really insufficient corroboration to justify the allegations made against her. To address this issue, we have raised the evidentiary standard which must be

met before the Attorney General is required to appoint an independent counsel. The statute currently requires that an independent counsel be appointed when there are "reasonable grounds to believe that further investigation is warranted." Our bill provides that an independent counsel must be appointed only when there are "substantial grounds to believe that further investigation is warranted." This change will give an Attorney General the discretion to decide that evidence she receives is not sufficiently strong to justify an independent counsel investigation.

As a further step to control the number of independent counsel investigations, our legislation limits the number of "covered persons" under the statute to the President, Vice President, members of the President's Cabinet, and the President's chief of staff. Accordingly, it would no longer be possible to appoint an independent counsel to investigate lower officials and staff whom an Attorney General could properly investigate on his or her own.

The four of us also agreed that it is a mistake to give an independent counsel jurisdiction over more than one investigation. For instance, Kenneth Starr started as the independent counsel for Whitewater. Attorney General Reno later expanded his jurisdiction to cover Travelgate, Filegate, the death of Vince Foster, and, of course, Monica Lewinsky. Unfortunately, the Attorney General's repeated expansion of Mr. Starr's jurisdiction created the mistaken impression that Mr. Starr was on a personal crusade against President Clinton, opening new lines of inquiry when prior ones failed to bear fruit. After Attorney General Reno expanded Mr. Starr's jurisdiction to include Monica Lewinsky, I publicly commented that this was a mistake, not because Kenneth Starr was not competent to handle the investigation, but because I was afraid that the public would see this as yet further proof that Starr was on a vendetta. I'm afraid this is exactly what came to pass.

Our bill would eliminate this problem by deleting the provision which allows the Attorney General to expand the jurisdiction of an independent counsel beyond his or her original mandate. Our bill further provides that the independent counsel can investigate only topics in his original jurisdiction or those "directly related" thereto.

The four of us also agreed that some independent counsel investigations drag on too long. Lawrence Walsh's Iran/Contra investigation lasted 6 years. Kenneth Starr's investigation of President Clinton has been going on for almost 5 years. Investigations of this length are really an anomaly in our criminal justice system. Federal grand juries are empaneled for a period of 18 months. As district attorney of Philadelphia, I had a series of grand juries

on complex topics such as municipal corruption, police corruption and drugs all of which lasted 18 months. If you can't find certain facts in 18 months, I think the odds are pretty good that you will never find them.

Our bill sets a 2-year time limit for independent counsel investigations. Since there are some who would try to take advantage of this time limit and "run out the clock" on an investigation, our bill also empowers the special division of the court to extend this original 2-year period for as long as necessary to make up for dilatory tactics. Our bill also provides that the special division can extend the original time period for good cause. Finally, the bill requires the Federal courts to conduct an expedited review of all matters relating to an investigation and a prosecution by an independent counsel.

Another complaint about the Starr investigation was that his report to Congress was a partisan document making an argument for impeachment rather than providing an impartial recitation of evidence. While I believe that Mr. Starr was merely doing his job when he submitted this report, I do agree that requiring such a report inserts an independent counsel into a process—impeachment—which should be left entirely to Congress. Accordingly, our bill deletes the requirement that the independent counsel submit a report to Congress of any substantial and credible information that may constitute grounds for an impeachment.

While Kenneth Starr was blamed for many things that were not his fault, I do believe he made a mistake when he decided to continue his private law practice while he was serving as an independent counsel. The job of being an independent counsel is a privilege and an enormous responsibility—it deserves someone's full-time attention. Accordingly, our bill requires that an independent counsel serve on a full-time basis for the duration of his or her investigation.

It appears that a majority of our colleagues believe that it is better to let independent counsel statute die and return to the old days when special prosecutors appointed and controlled by the Attorney General will investigate the President and his Cabinet. I am confident, however, that after the dust settles and tempers abate, our colleagues will realize that the independent counsel statute provides a better way to handle investigations of the President and his cabinet than any of the alternatives.

We must all remember that the independent counsel statute was passed to address a serious problem inherent in our system of government—the potential for abuse and conflicts of interest when the Attorney General investigates the President and other high-level executive branch officials. After all, it is the President who appoints

the Attorney General and is the Attorney General's boss. Often the Attorney General and the President are close friends. Accordingly, there is an inherent conflict of interest in having the Attorney General control an investigation of the President or the President's closest associates. Even if an Attorney General were capable of conducting an impartial investigation, the appearance of a conflict of interest is serious enough to discredit the Attorney General's findings, especially a finding of innocence.

The independent counsel statute is the only way to address this inherent conflict of interest. As memories of the Saturday Night Massacre have been supplanted by memories of Kenneth Starr, the pendulum of public opinion has swung too far against the statute. I am confident that as soon as the Attorney General begins to investigate his or her colleagues in the White House, the pendulum will swing back in the opposite direction. When this occurs, I believe that our colleagues will see that our approach is the best approach—to fix the problems in the statute, not abandon it.

To reiterate, the existing independent counsel statute is set to expire by sunset provisions tomorrow, June 30. There have been a series of five extensive hearings held in the Governmental Affairs Committee chaired by our distinguished colleague, Senator THOMPSON. During the course of those hearings, attended by all four of the cosponsors of this legislation, we have heard extensive testimony. The four of us have met on a number of occasions to craft the legislation which we are introducing today.

Our fundamental conclusion is that the Attorney General, acting through the Department of Justice, has an irreconcilable conflict of interest when it comes to investigating top officials of the administration. This is a judgment which we come to from our various points of view. My own perspective is molded significantly by my experience as district attorney of Philadelphia, knowing in detail the work of a prosecuting attorney, and the backdrop of the independent counsel statute was the "Saturday Night Massacre," where President Nixon was under investigation and fired two Attorneys General until he found one who would fire the special prosecutor, Archibald Cox.

What is not recollected, but was testified to at our hearings by Henry Ruth, later the special prosecutor succeeding Leon Jaworski, was that at a critical moment, when President Nixon decided to eliminate the special prosecutor, the President's Chief of Staff sent the FBI to surround the office of the special prosecutor and to seize the special prosecutor's papers. As Henry Ruth outlined it, those in the office took key documents hidden under their clothing, not knowing what would hap-

pen next. It was only the public outrage, and some 450,000 telegrams which descended on Washington, which led President Nixon to change his position.

But the importance of independence in the prosecutor's office cannot be overly emphasized. We have seen experiences with independent counsels, two to be specific, that by Judge Walsh, former Judge Walsh, who investigated President Reagan's administration in Iran-contra, and Judge Starr, former Judge Starr, who investigated President Clinton, where those two investigations have drawn the wrath on both sides of the political aisle. There does appear to be a consensus at the moment that there ought not be a renewal of the independent counsel statute. I personally believe, and Senators LIEBERMAN, LEVIN, and COLLINS concur, that this is a fundamental mistake. So we have worked from the mistakes of the past to craft a reform bill, and we have targeted the errors.

Sooner or later a crisis will arise in Washington. It happens all the time. The crisis will be about the need to investigate the President or the Vice President or some ranking official.

The question will present itself about the inherent conflict of interest of the Attorney General, and this statute will be available to deal with the problem.

We have dealt with the mistakes of Walsh-Starr investigations by limiting the subjects. Only the President, Vice President, Attorney General, and Cabinet members will be subject to investigation. There will not be an expansion of jurisdiction unless directly related to the central charge, which would eliminate the Monica Lewinsky investigation.

The independent counsel would have to be full time. I know from my days as district attorney it was impossible to do the job full time, but that ought to be a minimal requirement. We have imposed a time limit of some 2 years to be extended for cause, or to be extended automatically for delaying tactics, or by priority given by appellate courts on any legal issues raised. The independent counsel would have to submit an annual budget.

My colleagues are on the floor awaiting recognition. I inquire of the Chair how much of the 30 minutes has elapsed.

The PRESIDING OFFICER. Five minutes 40 seconds.

Mr. SPECTER. We reserve the remainder of the time, and in accordance with our procedure of alternating between the parties, Senator LEVIN has been on the floor but has found it necessary to absent himself for a moment. I yield to Senator LIEBERMAN.

The PRESIDING OFFICER. The Chair recognizes the Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair and thank my friend and colleague from Pennsylvania.

Mr. President, I am very pleased to be joining today with my friends and colleagues, Senators SPECTER, LEVIN, and COLLINS, in introducing the Independent Counsel Reform Act of 1999. With this bill, we hope to convince our colleagues, disillusioned perhaps by the conduct of particular investigations, that the Independent Counsel statute serves an essential purpose, and has served us well over the past twenty years. We want to convince our colleagues that our legislation will preserve the essential ideals that motivated the enactment of this statute in the years after Watergate, that no person is above the law, and that our highest government officials must be subject to our laws in the same way as any other person. If they are guilty, they must be held accountable. If they are not, they must be cleared. The American people are more likely to trust the findings of an Independent Counsel's investigation and conclusions. Officials who are wrongly accused will receive vindication that is far more credible to the public than when it comes from the Department of Justice. As a result, the public's confidence in its government is enhanced by the Independent Counsel statute.

We have drafted new provisions that will curb the excesses we have seen in a few recent investigations. These changes are substantial. The Committee on Governmental Affairs held five hearings on the Independent Counsel statute. We heard from numerous witnesses who had served as Independent Counsel, and as Attorney General, from former prosecutors and from defense attorneys. Many witnesses supported the statute, even defense attorneys who had represented targets in Independent Counsel investigations. Both witnesses who opposed the statute outright, and those who advocated keeping it in some form, suggested a number of improvements to the statute. We carefully considered those recommendations before we sat down to draft a bill that retains the essential features of the old law while reducing its scope, limiting the powers of the Independent Counsel, and bringing greater transparency into the process.

As a result of our bill, there will be far fewer Independent Counsel appointed, they will be appointed only to investigate the highest government officials, and their actions will be constrained by the same sorts of guidelines and practical restraints that govern regular federal prosecutors.

For example, officials covered by the statute will be limited to the President, the Vice President, the President's Chief of Staff, and Cabinet members. This is a major reduction in the number of officials currently covered by the Independent Counsel statute. We can trust the Department of Justice to investigate the mid-level officials listed in previous versions of the

statute. If any other investigation raises a conflict of interest, the Attorney General retains the authority to appoint her own Special Counsel. The purpose of our bill is to reserve the extraordinary mechanism of a court-appointed Independent Counsel for those rare cases involving allegations against our highest Executive Branch officials.

In another change that will reduce the number of Independent Counsel appointed, the threshold for seeking the appointment of an Independent Counsel will be raised, so that a greater amount of evidence to back up the allegation will be required. The Attorney General will also be entitled for the first time to issue subpoenas for evidence and convene grand juries during the preliminary investigation, and would be given more time to conduct the preliminary investigation. This change responds to concerns that, in the past, the Attorney General's hands have been tied during the preliminary investigation stage. With our bill, the Department of Justice will be able to conduct a more substantial preliminary investigation.

Each Independent Counsel will have to devote his full time to the position for the duration of his tenure. This will prevent the appearance of conflicts that may arise when an Independent Counsel continues with his private legal practice, and it will expedite investigations as well. The Independent Counsel will also be expected to conform his conduct to the written guidelines and established policies of the Department of Justice. The prior version of that requirement contained a broad loophole, which has been eliminated.

There have been many complaints about runaway prosecutors, who continue their investigations longer than is necessary or appropriate. Our bill will impose a time limit of two years on investigations by Independent Counsel. The Special Division of the Court of Appeals will be able to grant extensions of time, however, for good cause and to compensate for dilatory tactics by opposing counsel. Imposing a flexible time limit allows Independent Counsel the time they genuinely need to complete their investigations, and deters adverse counsel from using the time limit strategically to escape justice. But the time limit will also encourage future Independent Counsel to bring their investigations to an expeditious conclusion, and not chase down every imaginable lead.

Our bill makes another important change that will prevent expansion of investigations into unrelated areas. Until now the statute has allowed the Attorney General to request an expansion of an Independent Counsel's prosecutorial jurisdiction into unrelated areas. This happened several times with Judge Starr's investigation, and I believe those expansions contributed to

a perception that the prosecutor was pursuing the man and not the crime. An Independent Counsel must not exist to pursue every possible lead against his target until he finds some taint of criminality. His function, our bill makes clear, is to investigate that subject matter given him in his original grant of prosecutorial jurisdiction.

We also considered how we might impose greater budgetary restraints on Independent Counsel. Some have spoken of the need for a strict budget cap, but this idea strikes me as impractical, if not unworkable. It's just impossible to know in advance what crimes a prosecutor will uncover, how far his investigation will have to go to get to the truth, how expensive a trial and any appeals will be. Instead, we are bringing greater budgetary transparency to the process by directing Independent Counsel to produce an estimated budget for each year, and by allowing the General Accounting Office to comment on that budget. At the moment not enough is known about how Independent Counsel spend their money, and this greater transparency will provide more incentive for Counsel to budget responsibly.

A final change that we all readily agreed to was to eliminate entirely the requirement that an Independent Counsel refer evidence of impeachable offenses to the House of Representatives. The impeachment power is one of Congress's essential Constitutional functions, and no part of that role should be delegated by statute to a prosecutor.

This bill should be thought of as a work in progress. We hope to gather input from other Members and from outside experts, and to have committee hearings, and we intend to be flexible about incorporating suggestions. Some of the provisions contained in the bill may raise constitutional concerns, which need to be fully explored. For example, giving the Special Division of the Court of Appeals new authority to decide whether an Independent Counsel has violated Department of Justice guidelines may violate the doctrine of Separation of Powers. Other provisions expanding the Court's role may also have to be reformulated. I hope that all interested parties will be able to work together on amendments as harmoniously as the four of us did in drafting the original legislation.

The occasion of our introducing this legislation is tomorrow's expiration of the current Independent Counsel statute. Many have dismissed any efforts to revive the Independent Counsel as wrong and futile. No doubt it will be an uphill struggle, and I do not expect peoples' minds to be changed overnight. But I do believe that over time several factors will work to change peoples' minds.

First, I feel confident that we can convince our colleagues that this legislation is a better product than previous

versions of the statute, and addresses the specific concerns raised by the law's opponents. Those who have predicted the death of the Independent Counsel statute had not seen our legislation. I will work tirelessly, with the bill's other co-sponsors, to convince our colleagues to give this issue a fresh look.

Secondly, several controversial Independent Counsel investigations have clearly soured some people on the law. This is understandable, but it is regrettable, as I do not believe these investigations revealed any flaws in the Independent Counsel statute that cannot be fixed. The passions raised by Judge Starr's investigation of the President, in particular, must be allowed to subside, just as it took some time for the passions inspired by the Iran-Contra investigation to subside before the Independent Counsel statute could be re-authorized in 1994.

Finally, as these passions subside I believe Members of Congress will gradually be reminded that the Independent Counsel statute embodies certain principles fundamental to our democracy. The alternative to an Independent Counsel statute is a system in which the Attorney General must decide how to handle substantive allegations against colleagues in the Cabinet, or against the President. Often the President and the Attorney General are long-time friends and political allies. The Attorney General will not be trusted by some to ensure that an unbiased investigation will be conducted. In other cases, many will question the thoroughness of an investigation directed from inside the Department. In a time of great public cynicism about government, the Independent Counsel statute guarantees that even the President and his highest officials will have to answer for their criminal malfeasance. In that sense, this statute upholds the rule of law and will help stem the rising tide of cynicism and distrust toward our government. The American people support the Independent Counsel statute because it embodies the bedrock American principle that no person is above the law.

Mr. President, I am very pleased to be joining today Senator SPECTER, Senator LEVIN and Senator COLLINS in introducing the Independent Counsel Reform Act of 1999. It has been a great pleasure working with these three colleagues across party lines in what were, first, long hearings in the Governmental Affairs Committee on which we all serve, and then some very good collegial discussions about how to preserve the principles involved in the Independent Counsel Act while responding to what we have learned, particularly in its recent existence and implementation. We have achieved a good balance.

The point to stress—and my friend and colleague from Pennsylvania has

just done it—is this is all about the rule of law which is at the heart of what the American experience is about, that no one is above the law. There is no monarchy, there is no autocracy. Everyone is supposed to be governed by the same law.

The question is, When the highest officials of our Government, the most powerful people in this land are suspected of criminal wrongdoing, is it appropriate to have those suspicions investigated by the people who are suspected themselves or by those whom they have appointed? Does that guarantee a thorough and independent investigation, and does it guarantee or at least encourage the kinds of broad-based public acceptance of the credibility of that investigation that is critical to the trust and respect that we hope the American people will have for their Government?

The four of us have answered that what is required is a counsel who is not just special, as others would provide, including the current Attorney General, but one that is genuinely independent, not appointed by the Attorney General, and not able to be fired, dismissed by the Attorney General.

My research has indicated that from the last century right through the Nixon administration, from President Ulysses Grant to President Richard Nixon, there were actually six special counsel appointed to investigate possible criminal behavior by high officials of the Government, and three of those were dismissed by the administration they served, presumably because they began to act in a way that unsettled that administration.

That is the principle of the rule of law, trust in Government, which we tried to embody in this proposal with the changes that Senator SPECTER has mentioned. We have added a presumption of a limited term, a higher threshold for the appointment of an independent counsel, a smaller number of people to be subject to this statute—the President, Vice President, Attorney General, Members of the Cabinet and the Chief of Staff.

The prevailing consensus in this body and the other body is that we should not renew this statute and it will, of course, expire tomorrow. Many have dismissed the efforts we are making now as either wrong or futile. No doubt it will be an uphill struggle, but I am convinced it is the right struggle, and we can convince our colleagues of the justness of our cause.

I will say something else, Mr. President. There will be an independent counsel statute in the future. We are either going to adopt it at a time when we are not in crisis, when somebody high up in our Government is suspected of criminal wrongdoing—and that is our hope, that we do not adopt it in the spirit of crisis, or we will adopt it at that time when someone is suspected of

criminal wrongdoing and Members of this body and the other body will demand there not be a special counsel appointed by the Attorney General but an independent counsel.

I plead with my colleagues, as the law is allowed to expire tomorrow and as, hopefully, we have a cooling off period, to take a look at our proposal, to try to separate ourselves from the controversies surrounding Judge Starr's time as independent counsel and that of other recent independent counsel, and focus on the principle of the rule of law, that nobody is above the law in America, and to come to agree with us that the best way to preserve those principles is by readopting an Independent Counsel Act, one that is substantially reformed.

I thank my colleagues, and I yield the floor.

Mr. SPECTER. Mr. President, I inquire how much time has elapsed.

The PRESIDING OFFICER. Eleven and a half minutes has elapsed. Under the previous order, the Senator has control of all time until 12:35 p.m.

Mr. SPECTER. I thank the Chair. I yield to the distinguished Senator from Michigan, Mr. LEVIN.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank my good friend from Pennsylvania, and I commend him and Senators COLLINS and LIEBERMAN for their effort in putting together a bill which we believe represents lessons learned but also represents the feeling that we need to have an independent counsel law, that sooner or later it will again appear that this country needs a way in which to independently investigate allegations of serious wrongdoing against high-level officials.

The independent counsel law expires tomorrow. It was enacted in 1978 to establish a nonpartisan process for investigating allegations of criminal conduct by top executive branch officials. The key purpose of the law is to retain public confidence in criminal investigations when the Government investigates its highest officials. The goal is to treat top Federal officials no better and equally important, no worse than a private citizen, and at the end of the investigation, when the judgment is rendered, be it a statement of guilt or innocence, to have the public accept that judgment as a fair and impartial one.

Over the years, there have been many successful investigations by independent counsels, most of which resulted in no indictments or prosecutions but resolved outstanding allegations without partisanship or favor. There have been 20 independent counsel investigations in 20 years. Ten of those were closed without indictment; one was closed because of the death of the covered person. Excluding the top five most expensive investigations, the average cost of an independent counsel

investigation was under \$1 million. And for all but a handful of the cases investigated by independent counsel, the results of the investigations have had the public's confidence.

While some say the lesson of Watergate was that the previous system worked, I would refer our colleagues to the testimony of Henry Ruth, who was in charge of the Watergate special prosecution force during the Saturday Night Massacre. Referring to the possibility that the coverup by President Nixon could succeed, Mr. Ruth said, "It is impossible to describe how thin a thread existed at that time."

But the independent counsel law, while working most of the time, has also been abused by a few overzealous prosecutors. These prosecutors have made it apparent that before we reauthorize an independent counsel law, it would need to be dramatically revised to prevent a recurrence of the abuses that we have seen. The bill we are introducing today represents the lessons learned, while saving the essential elements of the independent counsel law to preserve public confidence in the prosecution of our top Government officials.

Our bill would, among other things, change the law in the following ways.

First, it would preclude an independent counsel from broadening an investigation to matters not within the original grant of jurisdiction.

Second, it would enforce the requirement that independent counsel follow the established policies of the Department of Justice by giving affected persons the opportunity to challenge questionable independent counsel actions not in line with those policies.

Third, it would eliminate the requirement for an independent counsel to submit an impeachment report to the House of Representatives.

Fourth, it would prohibit persons with an apparent or real conflict of interest from serving as independent counsel.

And, fifth, it would establish a presumptive 2-year term for an independent counsel's investigation.

Those are just five of the many major changes that would be made in the independent counsel law.

A handful of independent counsels have exceeded the intent of the independent counsel law and have taken the law to places that U.S. Attorneys would not go when investigating private citizens.

Independent Counsel Donald Smaltz took 4 years and spent \$20 million investigating allegations of graft in the Agriculture Department. Yet his 2-month trial of former Secretary Mike Espy ended in an acquittal on all 30 counts of corruption. Shortly thereafter, the Supreme Court threw out Smaltz' conviction of Sun-Diamond Growers of California, concluding that Smaltz and a Federal district court had

stretched the law to punish behavior that is not a crime.

The independent counsel for Samuel Pierce, Secretary of Housing and Urban Development under President Reagan, was in existence for almost 10 years, and that included almost 4 years after the independent counsel publicly announced he had closed the case with respect to Mr. Pierce.

Whitewater independent counsel Kenneth Starr has singlehandedly done more to undermine public confidence in the independent counsel law than anybody else. Well over half the American people think that Kenneth Starr is partisan and do not trust him to be fair. The editorials expressing concern about Mr. Starr's investigation and judgment are voluminous.

Mr. President, I ask unanimous consent that six of those editorials be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Hill, July 8, 1998]

WHITHER KENNETH STARR?

Whitewater Independent Counselor Kenneth Starr continues to disappoint his friends and delight his enemies in his long-running investigation of President Clinton.

In a week in which Linda Tripp twice testified before one of the three grand juries Starr convened during his four-year, \$40 million investigation, he was slapped down by a federal judge who ruled that he exceeded his authority in prosecuting former Associate Attorney General Webster Hubbell.

In a stinging 35-page opinion, U.S. District Judge James Robertson threw out the tax evasion indictment of Hubbell, his wife, his accountant and his tax lawyer, declaring that Starr had gone on "the quintessential fishing expedition" in subpoenaing some 13,000 pages of records from Hubbell after granting him immunity and then using them to build his case against Hubbell.

Starr's behavior toward Hubbell and the late Vince Foster was clearly indefensible. He showed a flagrant disregard for the Constitution by trying to create an exception from the lawyer-client privilege in the Foster case, but he went even further by ignoring Hubbell's constitutional right against self-incrimination when he improperly used information he got from Hubbell under a grant of immunity.

The ruling was the latest in a series of legal and public relations setbacks for Starr. Even as he defended himself against charges by media watchdog Steven Brill that he improperly leaked information about the Monica Lewinsky investigation to reporters, Starr was rebuffed by the U.S. Supreme Court, which rejected his claim that Vincent Foster's right to the lawyer-client privilege ended with his death.

Starr also was put on the defensive by news reports that Tripp asked Lewinsky leading questions about her relationship with President Clinton as she was secretly tape recording the former White House intern. Tripp denied the reports in her grand jury testimony, according to her lawyer.

But Starr seems undeterred by his latest problems. He immediately announced he will appeal the Hubbell decision, even though it is almost certain to further delay the conclusion of his investigation, even as some Re-

publicans hoped he would deliver an interim report to Congress before they hit the campaign trail this fall. Starr's spokesman said Sunday he won't submit an interim report, but will take as long as he needs to determine if there is "substantial and credible information" that crimes have been committed.

Meanwhile, Starr's investigation continues to expand—he now employs approximately 60 people, including 28 attorneys, not counting FBI agents working for him, and recently added 7,400 square feet of office space and opened a new office in Alexandria, Va.

Starr's ultra-marathon probe still has a long way to go, but he should keep in mind the original intent of the independent counsel law, which was to assure a fair and impartial investigation of high government officials. His recent actions indicate that he's forgotten, or lost sight of, the fundamental fact that our criminal justice system works well only when it earns the respect and confidence of the American people.

[From the New York Times, Feb. 25, 1998]

KEN STARR'S MISJUDGMENTS

It has long been apparent that Ken Starr has a tin ear for political appearances and public relations, but his decision to subpoena a White House aide, Sidney Blumenthal, undermines important legal and constitutional principles. On the tactical level, this move by the Independent Counsel is bone stupid. As a matter of principle, it is an attack on press freedom and the unrestricted flow of information that is unwarranted by the facts and beyond his mandate as a prosecutor.

This latest blunder fits a pattern of chronic clumsiness and periodic insensitivity to Mr. Starr's public responsibilities. His attempt to slough off his public duty and flee to Pepperdine University was dismaying. His political ties and refusal to give up private legal clients led us, in times past, to call for his removal. In four years he has failed to develop sensitivity to his obligations as custodian of an inquiry of national import. Apparently his staff contains no one who can talk him out of bad ideas.

This time he has failed in his obligation to the law itself. The effort to collect the name of every journalist who talked with a White House communications specialist amounts to a perverse use of the prosecutorial mandate to learn what the Nixon White House attempted to determine through wire-taps. Like any newspaper, we have an obvious selfish interest in the confidentiality of the reporting process. But you do not have to be a journalist to see that Mr. Starr has committed an ignorant assault on one of the most distinctive and essential elements of American democracy.

Mr. Starr created this mess by following a bad example. Two weeks ago the White House started its own demagogic search for leaks in an effort to divert attention from the question whether President Clinton and his associates had committed perjury or suborned others to commit it. Mr. Starr may also be miffed by reports that the White House has turned its trademark tool of personal attack on his prosecutorial staff. But he does not need to follow that pernicious example. He is armed with something more honorable and powerful in the mandate of the Attorney General and the majesty of the law.

But civic health demands that Mr. Starr get on with the investigation he is authorized to conduct and bring it to a speedy conclusion. The public interest does not lie in Mr. Blumenthal's phone records. It lies in

getting, as promptly as possible, the testimony of Monica Lewinsky, Vernon Jordan, Bruce Lindsey, Mr. Clinton and others whose testimony bears directly on the issue of false swearing.

In a tightly reasoned article in the *National Journal*, Stuart Taylor Jr. defended Mr. Starr's investigative procedures, including calling Ms. Lewinsky's mother before the grand jury, but called for him to resign in favor of someone with less political baggage. We are not at that point, because of the amount of time that would be lost. If at all possible, the nation needs to have this business driven to a conclusion without the delay that a switch in leadership would entail. Every time Mr. Starr goes off on one of these tangents or misreads the law he fritters away support from those who believe in the importance of this inquiry but bridle at his loco-weed judgments.

[From the *Wall Street Journal*, June 25, 1998]

A PROSECUTOR WITHOUT PUBLIC TRUST

(By Albert R. Hunt)

When Independent Counsel Kenneth Starr continued to represent tobacco companies and spoke to the law school run by televangelist Pat Robertson—two of President Clinton's arch enemies—his supporters insisted he wasn't a partisan. He just lacked political judgment.

When he announced he was going to leave early and accept a deanship at Pepperdine University, partially funded by right-wing Clinton-hater Richard Mellon Scaife, the Starr chorus claimed he wasn't insensitive. He lacked political judgment.

Or when he acknowledged in a lengthy, on-the-record interview with publisher Steven Brill that his office, in essence, had leaked to the press during the Clinton investigation, again Mr. Starr's supporters insisted he wasn't part of the right-wing conspiracy. Again, he just lacked political judgment.

Let's accept the word of Mr. Starr's legal, political and journalistic allies. He's not a right-wing partisan out to destroy the president. He is an inexperienced prosecutor who lacks political judgment. This is the man deciding whether to bring a controversial case in a political setting against the President of the United States.

No matter how this sordid episode unfolds in the ensuing months, Mr. Starr already has failed miserably in the central role of a special prosecutor; to engender public confidence that he is fair, impartial and independent.

This week's *Wall Street Journal*/NBC News poll shows that Americans think that he is none of the above. People are sick of his investigation, don't believe that what he is investigating is serious enough to even consider impeachment and hold Mr. Starr, far more than the president, responsible for the four year, \$40 million inquiry.

Most devastating for Mr. Starr is that nearly three-quarters of the respondents have little confidence that the report the independent counsel is expected to send to Congress will be fair and impartial; even a majority of Republicans feel that way.

Mr. Starr still holds some prosecutorial cards. Say he makes a few headline indictments and assume his report to Congress seems compelling. If this is so persuasive it turns around one-third of the doubters—an ambitious achievement—the country would still be split, making it difficult to consider impeachment.

"In every instance in which the public is asked to select between Bill Clinton and Kenneth Starr, the public consistently lines

up on the president's side," note Peter Hart and Robert Teeter, who conducted the survey.

This is not a new problem for the independent counsel. But just as he's rounding into what may be the final turn, his public credibility is lower than ever. This reflects, a few detached prosecutors suggest, his inexperience as a prosecutor, a second rate staff and an obsession to topple the president which causes him to overreach.

Mr. Starr's supporters—many of whom are obsessively hostile to the president—say a prosecutor can't be driven by polls. A decision on whether to subpoena or indict someone should be made on the legal merits and not on whether it will curry favor with the public.

But if any prosecutor lacks public support, that fatally undermines his or her task; in a democracy if people don't believe justice is being served, the system, by definition, isn't working.

In fact, prosecutors who go after crooked politicians, mobsters or businessmen tend to be very popular with the public. From Thomas Dewey to Rudy Giuliani, such prosecutions have been promising stepping stones to higher office. Occasionally a prosecutor over-reaches and stumbles; New Orleans District Attorney Jim Garrison in the Kennedy assassination and more recently Los Angeles DA Ira Reiner after a flawed prosecution of alleged child abuse. Such blunders are rare.

The Starr camp replies that independent counsels have never been so criticized by opponents and potential targets. That will come as news to Iran-Contra Independent Counsel Lawrence Walsh.

In 1992, Senate GOP Leader Bob Dole repeatedly charged that Mr. Walsh was "completely out of control." Earlier, Rep. Henry Hyde complained the Walsh investigation was of "essentially minor violations." Terry Eastland, a former top Justice Department official under Ronald Reagan, charged that the Walsh inquiry had been a "waste of money," having spent more than \$18.5 million of taxpayer funds. President Bush complained it "has been investigated over and over again. . . . It's been going on for years."

The notion that Mr. Starr has been a naive, defenseless target was undercut by Mr. Brill's controversial article last week, in which the independent counsel acknowledged that his deputy, Jackie Bennett, spends more than a little time with the press. That's not a surprise. One can disagree with some of Mr. Brill's sweeping conclusions about the independent counsel and the press and still have contempt for Mr. Starr's pious hypocrisy for pretending earlier that he was above the dirty business of leaking.

Ironically, what infuriates many conservatives is that Mr. Clinton is getting away without paying any price. That's simply not the case. Based on polls, and especially on anecdotal evidence from outside the Beltway, many—probably most—Americans think the president had a sexual relationship with Monica Lewinsky and lied about it.

They don't want him tarred and feathered or thrown out of office for these indiscretions—a typical response is that most people lie about sex—but it's affected their view of him. His high job approval ratings reflect the terrific economy. Bill Clinton today is a much discredited president with virtually no moral authority. The latest example is the tobacco bill, where he was simply unable to rally public and congressional support.

A few weeks ago a delightful retired couple in Carmel Valley, Calif., Earl and Miriam Selby, talked about how for the first time in

30 years of marriage they were arguing about politics. Earl Selby, a former newspaperman and magazine writer, who proudly notes he cast his first vote for FDR's third term in 1940, is "outraged at how Clinton has lowered respect for the presidency." Miriam, a former magazine writer, is equally "outraged at Starr's tactics and prosecutorial abuse."

There is no need for an argument, Selbys. You both are right.

[From the *New York Times*, June 22, 1998]

POLITICS BY OTHER MEANS

(By Anthony Lewis)

Kenneth Starr likes to say that he is going "by the book" in his investigation of President Clinton and Monica Lewinsky. The relevant book is the Justice Department's Rules of Conduct, published in the Code of Federal Regulations.

Rule 77.5 says that a Government lawyer "may not communicate" with a party "who the attorney for the government knows is represented by an attorney concerning the subject matter of the representation without the consent of the lawyer representing such a party."

On Jan. 16 Mr. Starr's office arranged to have Linda Tripp meet Monica Lewinsky at the Ritz-Carlton Hotel in Pentagon City. Suddenly Mr. Starr's agents descended on Ms. Lewinsky. They questioned her for many hours.

Ms. Lewinsky was represented by Francis D. Carter, who was negotiating for her with Paula Jones' lawyers. Mr. Starr did not ask Mr. Carter's consent to speak with his client, or even inform him.

Violation of that rule was not a light matter. The Independent Counsel Act requires such a counsel to follow Justice Department regulations unless that would undermine the purpose of the act—which respecting the right to a lawyer plainly would not—and makes failure to obey the rules "good cause" for the Attorney General to remove the counsel.

Mr. Starr has also violated, wholesale, the rules against prosecutors talking to the press about pending investigations. If anyone doubted that, it has now been made unanswerably clear by Steven Brill's meticulous marshaling of the evidence in the first issue of *Brill's Content*.

In his angry reply to the article, Mr. Starr never denied saying to Mr. Brill: "I have talked with reporters on background on some occasions, but Jackie [Bennett Jr., his deputy] has been the primary person involved in that. He has spent much of his time talking to individual reporters."

Mr. Brill said that the Starr and Bennett talks with the press violated Rule 6e of the Federal Rules of Criminal Procedure, which forbid disclosure of grand-jury information. Mr. Starr argued in reply that Rule 6e did not apply because he and his staff disclosed not grand-jury testimony but information obtained elsewhere and comments on it.

Whatever the merits of the legal argument about Rule 6e, didn't the Starr leaks violate ethical rules and Justice Department regulations? When Mr. Brill asked that question, Mr. Starr replied that they would be violations except when he was "countering misinformation" about his office. "We have a duty to promote confidence in the work of this office."

What a breathtaking assertion. It means that whenever anyone disagrees with him, Mr. Starr has a right to break the rules and become an unnamed source for some journalist ready to convey his version of the story. In politics, that is called spinning.

Mr. Starr's assertion that his leaks are only to counter misinformation was also false. On the day the Lewinsky story broke, Jan. 21, Mr. Starr told Mr. Brill, Jackie Bennett spent "much of the day briefing the press." That was before there was any "misinformation" to answer.

Mr. Starr's veracity is in question on another matter. The Brill article says Michael Isikoff of Newsweek told Mr. Brill that Jackie Bennett asked him to hold up writing about Monica Lewinsky in January because "they were going to try to get Lewinsky to wire herself and get [Vernon] Jordan and maybe even the President on tape obstructing justice."

Mr. Starr said his office had "never asked Ms. Lewinsky to agree to wire herself for a conversation with Mr. Jordan or the President." But it was not only Mr. Isikoff who said that happened. Ms. Lewinsky's lawyers said in February, in *Time* magazine, that the prosecutors "wanted her wired . . . to record telephone calls with the President of the U.S., Vernon Jordan and others"—and made her consent a condition of being given immunity from prosecution.

We all know that prosecutors leak. But Kenneth Starr has been so sanctimonious, so insistent that he never leaks.

Far from going "by the book," he has in many ways abused his extraordinary power. Most Americans perceive that. Others are so critical of President Clinton that they overlook Mr. Starr's abuses. They need reminding that however tempting the target of a prosecutor, the end does not justify abusive means.

[From the Los Angeles Times, Feb. 26, 1998]

STARR STEPS OUT OF BOUNDS

Special counsel Kenneth W. Starr plans today to bring a White House advisor and his records before a grand jury to try to find out what he said to reporters about the Monica Lewinsky affair. The basis for this extraordinary assault on privacy is Starr's suspicion that Clinton administration aides have been spreading "misinformation" about personnel in the special counsel's office. As Starr sees it, that could represent an effort to "intimidate prosecutors and investigators, impede the work of the grand jury, or otherwise obstruct justice." All of these are federal crimes.

The subpoena that Starr has issued for White House aide Sidney Blumenthal and his records appears to be allowable under the special counsel's broad powers. At the same time Starr is clearly treading on highly problematical ground with his suggestion that any White House campaign to try to discredit him or his investigators may represent an illegal effort to influence or interfere with the work of prosecutors or grand jurors.

Starr has spent a lot of time in Washington, enough to grasp the difference between engaging in hardball politics and committing a felony. And he has been a lawyer long enough to understand that constitutionally protected comment about the special counsel's office does not constitute a conspiratorial attempt to subvert justice.

The truth is that in the Lewinsky investigation both the independent counsel and the White House have been playing the game of media manipulation to the hilt, using leaks, planted stories, spin control and anything else—some of it pretty nasty stuff indeed—to try to shape public opinion.

What set Starr off were stories about judicial criticism or penalties levied against two of his prosecutors because of their profes-

sional conduct years ago. What the two did is a matter of public record. But Starr says many other allegations about personnel involved in his investigation are deliberate falsehoods, and so he has dubiously raised the felonious specter of attempted intimidation.

But intimidation can cut two ways. Surely hauling a White House political adviser and his log of press contacts before a grand jury can be seen as a sly attempt to keep Clinton loyalists from talking with the media, denying the public information it has a right to hear and evaluate for itself. That is not within Starr's mandate.

The special counsel was not hired to act as a censor. His investigation has often been accused of ranging wide afield. This time it has stumbled right off the map.

[From the Detroit Free Press, Feb. 26, 1998]

STARR'S WAR

Whatever else Kenneth Starr may accomplish, he's becoming the best brief for the abolition of the special prosecutor's office that anybody could ever imagine. He is exercising power without wisdom, power without restraint. His latest wave of subpoenas is an attempt to use the grand jury process to punish his critics, an outrageous misuse of prosecutorial gunpowder.

What does Mr. Starr's current onslaught have to do with Whitewater? What does it have to do even with Monica Lewinsky? Mr. Starr is angry that someone at the White House has dredged up old newspaper stories that suggest he's got a couple of pit bulls on his staff, one of whom was once cited for overzealousness in a previous job as a prosecutor. So faxing old New York Daily News stories around, apparently, has just become a federal crime.

Mr. Starr is out to bring down the president, and he seems not to care if he brings down the integrity of the justice system with him. The president's defenders, meanwhile, are whipping up the press to investigate the investigators, blasting Mr. Starr for leaks from his own staff and in general tipping over garbage cans in the hope that the clangor will distract attention from the potential obstruction of justice charge that hangs over the president.

This is unseemly behavior by both sides, but the root of it is the unchecked power given to Mr. Starr. Virtually no one has the ability to jerk his leash; the attorney general can remove him only for flagrant violation of the law. He's the only person or institution in the U.S. government that operates without checks and balances.

Come 1999, when the statute is up for renewal, Republicans who are hugely enjoying the spectacle of a Democratic president at bay ought to recall how they felt about Lawrence Walsh, and how they'll feel when some future prosecutor recklessly targets another GOP occupant of the White House.

For now, for a moment, assume the worst is true about Bill Clinton (although Mr. Starr has spend nearly 3 1/2 years and \$26 million and come up dry)—sexual indiscretion, something funny about a failed land deal in Arkansas. Then ask who's doing the worse damage to fairness, justice, the conduct of government and the democratic process—the president or his pursuer? We rest our case.

Mr. LEVIN. A few of the headlines read: "A Prosecutor Without Public Trust," "Ken Starr's Misjudgments," and "Starr Steps Out of Bounds." Robert Morgenthau, in fact, the District Attorney for Manhattan, and one of

the most respected prosecutors in the country, is quoted as saying that Mr. Starr violated "every rule in the book."

Some argue that the statute should be scrapped. I cannot agree, provided that we can prevent the abuses we have experienced in the past. We need a mechanism to address credible allegations of serious criminal wrongdoing by top executive branch officials. We have made improvements in the statute each of the three times it has been reauthorized over the past 20 years. We have required independent counsel to comply with established Justice Department policies and procedures; we have added standards of conduct for independent counsel; and we have added a whole new host of cost controls, including requiring new independent counsel to comply with the expenditure policies of the Justice Department with respect to salary levels, use of Government office space and travel.

But we obviously have failed to foreclose opportunities for major excesses and clear abuses by independent counsel. Unless we can amend the law sufficiently to stop the excesses and abuses in the future—and I think we can do that—then the law should lapse. We need a law but only if the law ensures that individuals who conduct these investigations are highly qualified, non-partisan attorneys with good judgment and common sense who are bound in by appropriate limits.

The list of lessons learned over the last few years is long. We have tried to incorporate them into the bill we are introducing today.

The first issues concern the appointment of the independent counsel. There was a high degree of dissatisfaction and concern with the choice of Kenneth Starr as independent counsel in the Whitewater matter. The investigation was already well underway with Special Counsel Bob Fiske who had been appointed by Attorney General Reno. Mr. Fiske was a well-respected, veteran prosecutor who had also been a lifelong Republican. To remove any doubt about whether he could be appointed under the reauthorized independent counsel law as well, Congress had specifically authorized the special division of the court to reappoint him. But the three judge special division took it upon itself to terminate Mr. Fiske and replace him with Mr. Starr. Many of us challenged the court's decision at the time, arguing that Mr. Starr was a highly partisan person who could not bring the necessary appearance of independence to the job. At the time of his appointment he was linked to the Paula Jones case, having argued publicly against the President's position on immunity from civil suit. It turns out he had also conferred numerous times with attorneys for Paula Jones. He had served as the Finance Co-Chairman of the Congressional campaign of

a Republican in Alexandria, Virginia. At the time of Mr. Starr's appointment I wrote to the Special Division and urged them to reconsider their decision. "The issue with respect to Mr. Starr," I said, "... is that he lacks the necessary appearance of independence essential for public confidence in the process." Our concerns have proven to be true over time, to the point that Mr. Starr is perceived by the public as a partisan prosecutor.

Our bill would make some very important changes in the current process in this regard. First, the special division of three judges who make independent counsel appointments under current law are appointed by the Chief Justice of the Supreme Court, and the court picks an independent counsel from a list of candidates developed by the special division from various recommendations over time. Our bill would require that the judges who serve on the special division court be picked by lottery from a pool of all of the federal appellate court judges. The Special Division would then be required to develop a list of qualified candidates to serve as independent counsels from a list of five candidates from each federal circuit selected by the chief judge of each circuit. Our bill would explicitly prohibit an independent counsel candidate from having an actual or apparent conflict of interest, and it would encourage the appointment of an individual with prosecutorial experience.

Mr. Starr was not a prosecutor. In making a number of critically important judgment calls, Mr. Starr demonstrated a lack of understanding of the discipline a prosecutor needs in order to exercise the tremendous discretion and power of the office with fairness and justice. The bill would seek to remedy this by requiring the individual appointed as independent counsel to have prosecutorial experience "to the extent practicable."

Many people expressed concern over the large and lucrative private practice Mr. Starr continued to have as independent counsel. We will never know if the investigation into the President could have been concluded much more expeditiously had Mr. Starr set aside his private practice from the inception of his appointment, but it's a reasonable possibility at least that it could have been. Independent counsel appointments are supposed to receive the highest priority and the public benefits from a timely resolution of the allegations. Our bill would require an independent counsel to devote full time to the investigation to bring it to a prompt conclusion, because we think doing so has important benefits to the public interest.

Another area has to do with the scope of jurisdiction. This has been an area of great concern to some of us. That relates particularly to Mr. Starr's

investigation, because he was originally appointed to investigate the Madison Guarantee Savings and Loan matter as it possibly related to President Clinton. But he ended up prosecuting a multitude of other matters. At one point his office even interviewed Arkansas State troopers about President Clinton's relationship with a number of different women when he was Governor. Moreover, Mr. Starr had his jurisdiction expanded to include Travelgate, Filegate, and the Monica Lewinsky matter. With each expansion, he looked more and more like a prosecutor pursuing a person instead of a prosecutor pursuing a crime.

In the end he became Javert to President Clinton's Jean Valjean. Our bill limits the scope of the original grant of jurisdiction to only those matters that are "directly" related to an independent counsel's original jurisdiction, and eliminates the provision allowing an expansion of jurisdiction. Such matters would be investigated by the Department of Justice or, if appropriate, a new independent counsel could be appointed. Only in this way can we prevent an independent counsel from becoming a permanent prosecutor of the President or any other covered official.

Experience has also taught us that some of these independent counsel investigations develop huge staffs over time—far beyond those that would be available in an ordinary investigation. At one point, it was alleged that the Starr investigation was one of the top three investigations in terms of numbers of FBI agents in the country—ranking right up there with the Unibomber and the World Trade Center bombing. Our bill would limit the number of detailees from the FBI and the Department of Justice to a number reasonably related to the number of staff the Justice Department or FBI normally assigns to a similar case.

One of my greatest concerns in the past five years has been the failure of Mr. Starr to comply with both the spirit and, I believe, the letter of the law with respect to the requirement that an independent counsel follow established Department of Justice policies. I have made several floor statements identifying the particular instances in which I believe Mr. Starr has exceeded Justice Department policies, so I will not elaborate here. The current law requires an independent counsel to follow established Justice Department policies except to the extent to do so would undermine the purposes of the independent counsel law. That exception, which was intended to be a very narrow exception, has been used by Mr. Starr to justify a laundry list of questionable actions. The bill we are introducing today would eliminate that exception and provide that the only policy an independent counsel would be allowed to ignore would be that part of a policy or guideline that requires approval by

a top Justice Department official. The bill provides that even in that situation, the independent counsel should consult with a top Justice Department official; he or she just isn't required to get that official's approval.

The bill also creates a remedy for the situation where a target or witness in an independent counsel investigation believes the independent counsel is not complying with established Justice Department procedures. Currently, Justice Department policies are not enforceable in court, and several individuals who attempted to enforce compliance by Mr. Starr were turned away by the court. This bill would give such an individual an explicit right to first obtain an opinion by the Attorney General as to whether an independent counsel was complying with a specific Department of Justice policy, and if the Attorney General determines that the independent counsel is not, the bill allows the person to seek enforcement from the special court.

Mr. Starr took the unusual step in his investigation to hire an outside ethics attorney. The bill requires an independent counsel to use as his or her ethics adviser the person already housed in the Department of Justice who is familiar with the ethical rules and regulations of a Justice Department Attorney—the designated agency ethics official or DAEO. This will help to keep the office of the independent counsel in tune with the ethical requirements of other investigative offices, giving greater assurance that Justice Department policies with respect to ethics issues will be followed.

Great concern has developed over the cost of these independent counsel investigations. Mr. Smaltz spent some \$20 million to have a 30 count indictment rejected by a jury. Mr. Starr is likely to be the most expensive independent counsel ever—topping \$50 million when all is said and done. These figures are shocking. The bill would address this problem by requiring an independent counsel to establish a budget with consultation of the Attorney General and the General Accounting Office to review the budget and submit a written analysis to Congress. We have tried with every reauthorization of this statute to obtain cost controls over the operations of the independent counsels. We've made some progress, but obviously more needs to be done. The bill also sets a two year presumptive limit on the work of an independent counsel and requires the independent counsel to affirmatively seek an extension for one year from the special court. By requiring an independent counsel to establish a budget and presumptively limiting the term of an independent counsel to two years, I believe we will impose a useful and meaningful cost control on these offices.

A final concern that many of us have had with the independent counsel law

is the provision regarding the referral of information to the House of Representatives regarding possible impeachable offenses. Mr. Starr's report to the House was not only shockingly and unnecessarily graphic, it was a brief for impeachment, far beyond the role envisioned by the independent counsel law. Mr. Starr's report also violated the fairness expected by the American people by presenting information on possible impeachable offenses in a biased and prejudicial manner. Under the Constitution, the House has sole responsibility to decide whether or not the President should be impeached. The independent counsel did not have a statutory responsibility to argue for impeachment. His responsibility was to forward "information" to the Congress that "may constitute grounds for an impeachment." Our bill would eliminate the provision with respect to impeachment, removing any obligation on the part of an independent counsel to take any initiative in this which is reserved exclusively to the House of Representatives by the Constitution.

Finally, it is clear, obviously, that the independent counsel law is going to expire tomorrow. We are going to have the cooling off period that former Senator Howard Baker prescribed during our Governmental Affairs Committee hearings. I hope that after a reasonable cooling off period we will turn our attention to reestablishing a reasonable and fair procedure for the investigation of criminal allegations of our top officials and that the legislation we consider at that time contain the necessary protections against abuses of power. The bill we are introducing today is our best effort at drafting such legislation.

I yield the floor.

Mr. SPECTER. How much time remains?

The PRESIDING OFFICER. The Senator from Pennsylvania has 7 minutes 48 seconds.

Mr. SPECTER. That is about a quarter of the time.

I yield to my distinguished colleague from Maine, Senator COLLINS.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I am pleased to be a coauthor of the Independent Counsel Reform Act of 1999. At the outset, let me express my deep appreciation to Senators SPECTER, LIEBERMAN, and LEVIN for the bipartisan spirit in which they approached the task of drafting this important legislation. Legislation of this complexity, which must balance innumerable competing but important interests, is never easy to achieve. This is particularly true when the legislation—as is the case in this bill—touches on political nerves that are still raw and fresh.

We have worked very hard to achieve legislation that I believe truly serves

the public interest while correcting the significant flaws in the current law.

Supporting the reauthorization of the Independent Counsel Act is not likely to win this bipartisan group much applause from the Clinton administration or congressional partisans on either side of the aisle. Many of our colleagues say let it die. However, I caution my colleagues against short memories. We should not forget what prompted passage of this legislation more than two decades ago and its reauthorization three times since then.

The Congress that passed the independent counsel law after Watergate wanted to assure the public that there were institutional guarantees that would never again allow the political leadership of the Justice Department to obstruct a criminal investigation of the President and the highest Government officials in the land. Their concern was not abstract or based on conjecture. The Justice Department, indeed, the Attorney General himself was implicated in the coverup of criminal acts by the incumbent administration.

Do we think it couldn't happen again? Clearly, unfortunately, it could.

The fact is, there will always be cases in which the Attorney General has an actual or an apparent conflict of interest. The Attorney General simply cannot credibly conduct an extensive investigation and make prosecutorial decisions involving his or her boss, the President, the Vice President, or colleagues in the Cabinet. We must have an institutional mechanism that assures the public that allegations of serious criminal conduct by high level officials will be thoroughly investigated and, if necessary, prosecuted.

Only by resorting to a prosecutor beyond the actual and perceived control of the administration can the public be assured that impartial justice extends to the most influential and powerful leaders of our land. Moreover, the independent counsel law fosters public confidence in the decision not to prosecute high level Government officials. A Government official who has been investigated but cleared by an independent counsel can justifiably and with credibility reclaim his or her public reputation. Political opponents cannot reasonably claim that the official escapes scrutiny and punishment by pulling political strings at the Justice Department.

We should keep in mind that the majority of the independent counsel over the past two decades have conducted prompt and cost-effective investigations that resulted in decisions not to prosecute or indict the official accused of the criminal wrongdoing. Can there be any doubt that the political credibility of these decisions was enhanced significantly because the prosecutor had no political or financial connections to the target or other members of the administration? If we return these

important decisions to the Justice Department, I fear we will encourage public skepticism of decisions not to prosecute. There will always be a cloud of suspicion tainting the decision.

The need for the independent counsel mechanism is as evident today as it was back in 1978, when the law was first enacted. We have learned much from our experience with the law. It is flawed. It needs significant reform. That is just what the legislation we are introducing today would do.

Though I strongly believe we should reauthorize the Independent Counsel Act, I am mindful of its many shortcomings. I participated in an excellent series of hearings chaired by my colleague from Tennessee, Senator THOMPSON, and virtually every witness agreed that the law must be changed.

The legislation we are introducing today takes significant steps to rein in the length and the cost of independent counsel investigations. It limits all independent counsel investigations to a maximum of 2 years and only allows the investigation to proceed for additional 1-year periods upon a special showing to the court. It requires independent counsel to serve full time and to submit annual budgets to the General Accounting Office.

We substantially limit the number of covered officials under the act, limiting coverage to only the President, the Vice President, the Cabinet, and the President's chief of staff. By limiting the coverage of the law, we have reserved the extraordinary remedy of an independent counsel for those high-level officials who will always, by virtue of their position, pose a conflict of interest to the Justice Department.

We make many other changes. We heighten the threshold for the appointment of an independent counsel, and we make clear that an independent counsel must follow the prosecutorial guidelines of the Department of Justice.

We also abolish the requirement for independent counsel to report impeachable conduct to the House of Representatives. We have come up with a bill that would preserve this important mechanism while correcting the serious flaws in the current act.

Let me conclude by again recognizing the efforts of my distinguished colleagues and applaud them for their leadership on this important issue. My hope is that the rest of our colleagues will take advantage of this opportunity to remedy the weaknesses in the independent counsel law before the next unfortunate and inevitable crisis occurs and the public is left doubting whether it can have confidence that the laws of this country will be enforced impartially, without regard to rank or privilege.

I thank the Chair.

Mr. SPECTER. Mr. President, how much time remains?

The PRESIDING OFFICER. Fifteen seconds.

Mr. SPECTER. I thank my distinguished colleagues, Senator COLLINS, Senator LEVIN, and Senator LIEBERMAN, for their fine presentations.

Mr. President, I ask unanimous consent to have printed in the RECORD a summary of the independent counsel statute, a section-by-section summary of the Independent Counsel Reform Act of 1999, and the text of the bill.

There being no objection, the referenced materials were ordered to be printed in the RECORD, as follows:

S. 1297

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Independent Counsel Reform Act of 1999".

SEC. 2. INDEPENDENT COUNSEL STATUTE.

Chapter 40 of title 28, United States Code, is amended to read as follows:

"CHAPTER 40—INDEPENDENT COUNSEL

"Sec.

"591. Applicability of provisions of this chapter.

"592. Preliminary investigation and application for appointment of an independent counsel.

"593. Duties of the division of the court.

"594. Authority and duties of an independent counsel.

"595. Congressional oversight.

"596. Removal of an independent counsel; termination of office.

"597. Relationship with Department of Justice.

"598. Severability.

"599. Termination of effect of chapter.

"§ 591. Applicability of provisions of this chapter

"(a) PRELIMINARY INVESTIGATION WITH RESPECT TO CERTAIN COVERED PERSONS.—The Attorney General shall conduct a preliminary investigation in accordance with section 592 whenever the Attorney General receives information sufficient to constitute grounds to investigate whether any person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

"(b) PERSONS TO WHOM SUBSECTION (a) APPLIES.—The persons referred to in subsection (a) are—

"(1) the President and Vice President;

"(2) any individual serving in a position listed in section 5312 of title 5; and

"(3) the Chief of Staff to the President.

"(c) EXAMINATION OF INFORMATION TO DETERMINE NEED FOR PRELIMINARY INVESTIGATION.—

"(1) FACTORS TO BE CONSIDERED.—In determining under subsection (a) or section 592(c)(2) whether grounds to investigate exist, the Attorney General shall consider only—

"(A) the specificity of the information received; and

"(B) the credibility of the source of the information.

"(2) TIME PERIOD FOR MAKING DETERMINATION.—The Attorney General shall determine whether grounds to investigate exist not later than 30 days after the information is first received. If within that 30-day period

the Attorney General determines that the information is not specific or is not from a credible source, then the Attorney General shall close the matter. If within that 30-day period the Attorney General determines that the information is specific and from a credible source, the Attorney General shall, upon making that determination, commence a preliminary investigation with respect to that information. If the Attorney General is unable to determine, within that 30-day period, whether the information is specific and from a credible source, the Attorney General shall, at the end of that 30-day period, commence a preliminary investigation with respect to that information.

"(d) RECUSAL OF ATTORNEY GENERAL.—

"(1) WHEN RECUSAL IS REQUIRED.—

"(A) INVOLVING THE ATTORNEY GENERAL.—If information received under this chapter involves the Attorney General, the next most senior official in the Department of Justice who is not also recused shall perform the duties assigned under this chapter to the Attorney General.

"(B) PERSONAL OR FINANCIAL RELATIONSHIP.—If information received under this chapter involves a person with whom the Attorney General has a personal or financial relationship, the Attorney General shall recuse himself or herself by designating the next most senior official in the Department of Justice who is not also recused to perform the duties assigned under this chapter to the Attorney General.

"(2) REQUIREMENTS FOR RECUSAL DETERMINATION.—Before personally making any other determination under this chapter with respect to information received under this chapter, the Attorney General shall determine under paragraph (1)(B) whether recusal is necessary. The Attorney General shall set forth this determination in writing, identify the facts considered by the Attorney General, and set forth the reasons for the recusal. The Attorney General shall file this determination with any notification or application submitted to the division of the court under this chapter with respect to that information.

"§ 592. Preliminary investigation and application for appointment of an independent counsel

"(a) CONDUCT OF PRELIMINARY INVESTIGATION.—

"(1) IN GENERAL.—A preliminary investigation conducted under this chapter shall be of those matters as the Attorney General considers appropriate in order to make a determination, under subsection (b) or (c), with respect to each potential violation, or allegation of a violation, of criminal law. The Attorney General shall make that determination not later than 120 days after the preliminary investigation is commenced, except that, in the case of a preliminary investigation commenced after a congressional request under subsection (g), the Attorney General shall make that determination not later than 120 days after the request is received. The Attorney General shall promptly notify the division of the court specified in section 593(a) of the commencement of that preliminary investigation and the date of commencement.

"(2) LIMITED AUTHORITY OF ATTORNEY GENERAL.—

"(A) IN GENERAL.—In conducting preliminary investigations under this chapter, the Attorney General shall have no authority to plea bargain or grant immunity. The Attorney General shall have the authority to convene grand juries and issue subpoenas.

"(B) NOT TO BE BASED OF DETERMINATIONS.—The Attorney General shall not base a determination under this chapter—

"(i) that information with respect to a violation of criminal law by a person is not specific and from a credible source upon a determination that that person lacked the state of mind required for the violation of criminal law; or

"(ii) that there are no substantial grounds to believe that further investigation is warranted, upon a determination that that person lacked the state of mind required for the criminal violation involved, unless there is a preponderance of the evidence that the person lacked that state of mind.

"(3) EXTENSION OF TIME FOR PRELIMINARY INVESTIGATION.—The Attorney General may apply to the division of the court for a single extension, for a period of not more than 90 days, of the 120-day period referred to in paragraph (1). The division of the court may, upon a showing of good cause, grant that extension.

"(b) DETERMINATION THAT FURTHER INVESTIGATION NOT WARRANTED.—

"(1) NOTIFICATION OF DIVISION OF THE COURT.—If the Attorney General, upon completion of a preliminary investigation under this chapter, determines that there are no substantial grounds to believe that further investigation is warranted, the Attorney General shall promptly so notify the division of the court, and the division of the court shall have no power to appoint an independent counsel with respect to the matters involved.

"(2) FORM OF NOTIFICATION.—Notification under paragraph (1) shall contain a summary of the information received and a summary of the results of the preliminary investigation.

"(c) DETERMINATION THAT FURTHER INVESTIGATION IS WARRANTED.—

"(1) APPLICATION FOR APPOINTMENT OF INDEPENDENT COUNSEL.—The Attorney General shall apply to the division of the court for the appointment of an independent counsel if—

"(A) the Attorney General, upon completion of a preliminary investigation under this chapter, determines that there are substantial grounds to believe that further investigation is warranted; or

"(B) the 120-day period referred to in subsection (a)(1), and any extension granted under subsection (a)(3), have elapsed and the Attorney General has not filed a notification with the division of the court under subsection (b)(1).

In determining under this chapter whether there are substantial grounds to believe that further investigation is warranted, the Attorney General shall comply with the written or other established policies of the Department of Justice with respect to the conduct of criminal investigations.

"(2) RECEIPT OF ADDITIONAL INFORMATION.—If, after submitting a notification under subsection (b)(1), the Attorney General receives additional information sufficient to constitute grounds to investigate the matters to which that notification related, the Attorney General shall—

"(A) conduct such additional preliminary investigation as the Attorney General considers appropriate for a period of not more than 120 days after the date on which that additional information is received; and

"(B) otherwise comply with the provisions of this section with respect to that additional preliminary investigation to the same extent as any other preliminary investigation under this section.

“(d) CONTENTS OF APPLICATION.—Any application for the appointment of an independent counsel under this chapter shall contain sufficient information to assist the division of the court in selecting an independent counsel and in defining that independent counsel’s prosecutorial jurisdiction so that the independent counsel has adequate authority to fully investigate and prosecute the subject matter and all matters directly related to that subject matter.

“(e) DISCLOSURE OF INFORMATION.—Except as otherwise provided in this chapter or as is deemed necessary for law enforcement purposes, no officer or employee of the Department of Justice or an office of independent counsel may, without leave of the division of the court, disclose to any individual outside the Department of Justice or that office any notification, application, or any other document, materials, or memorandum supplied to the division of the court under this chapter. Nothing in this chapter shall be construed as authorizing the withholding of information from the Congress.

“(f) LIMITATION ON JUDICIAL REVIEW.—The Attorney General’s determination under this chapter to apply to the division of the court for the appointment of an independent counsel shall not be reviewable in any court.

“(g) CONGRESSIONAL REQUEST.—

“(1) BY JUDICIARY COMMITTEE OR MEMBERS THEREOF.—The Committee on the Judiciary of either House of the Congress, or a majority of majority party members or a majority of all nonmajority party members of either such committee, may request in writing that the Attorney General apply for the appointment of an independent counsel.

“(2) REPORT BY ATTORNEY GENERAL PURSUANT TO REQUEST.—Not later than 30 days after the receipt of a request under paragraph (1), the Attorney General shall submit, to the committee making the request, or to the committee on which the persons making the request serve, a report on whether the Attorney General has begun or will begin a preliminary investigation under this chapter of the matters with respect to which the request is made, in accordance with section 591(a). The report shall set forth the reasons for the Attorney General’s decision regarding the preliminary investigation as it relates to each of the matters with respect to which the congressional request is made. If there is such a preliminary investigation, the report shall include the date on which the preliminary investigation began or will begin.

“(3) SUBMISSION OF INFORMATION IN RESPONSE TO CONGRESSIONAL REQUEST.—At the same time as any notification, application, or any other document, material, or memorandum is supplied to the division of the court pursuant to this section with respect to a preliminary investigation of any matter with respect to which a request is made under paragraph (1), that notification, application, or other document, material, or memorandum shall be supplied to the committee making the request, or to the committee on which the persons making the request serve. If no application for the appointment of an independent counsel is made to the division of the court under this section pursuant to such a preliminary investigation, the Attorney General shall submit a report to that committee stating the reasons why the application was not made, addressing each matter with respect to which the congressional request was made.

“(4) DISCLOSURE OF INFORMATION.—Any report, notification, application, or other document, material, or memorandum supplied to

a committee under this subsection shall not be revealed to any third party, except that the committee may, either on its own initiative or upon the request of the Attorney General, make public such portion or portions of that report, notification, application, document, material, or memorandum as will not in the committee’s judgment prejudice the rights of any individual.

“§ 593. Duties of the division of the court

“(a) REFERENCE TO DIVISION OF THE COURT.—The division of the court to which this chapter refers is the division established under section 49 of this title.

“(b) APPOINTMENT AND JURISDICTION OF INDEPENDENT COUNSEL.—

“(1) AUTHORITY.—Upon receipt of an application under section 592(c), the division of the court shall appoint an appropriate independent counsel and define the independent counsel’s prosecutorial jurisdiction. The appointment shall be made from a list of candidates comprised of 5 individuals recommended by the chief judge of each Federal circuit and forwarded by January 15 of each year to the division of the court.

“(2) QUALIFICATIONS OF INDEPENDENT COUNSEL.—The division of the court shall appoint as independent counsel an individual who—

“(A) has appropriate experience, including, to the extent practicable, prosecutorial experience and who has no actual or apparent personal, financial, or political conflict of interest;

“(B) will conduct the investigation on a full-time basis and in a prompt, responsible, and cost-effective manner; and

“(C) does not hold any office of profit or trust under the United States.

“(3) SCOPE OF PROSECUTORIAL JURISDICTION.—

“(A) IN GENERAL.—In defining the independent counsel’s prosecutorial jurisdiction under this chapter, the division of the court shall assure that the independent counsel has adequate authority to fully investigate and prosecute—

“(i) the subject matter with respect to which the Attorney General has requested the appointment of the independent counsel; and

“(ii) all matters that are directly related to the independent counsel’s prosecutorial jurisdiction and the proper investigation and prosecution of the subject matter of such jurisdiction.

“(B) DIRECTLY RELATED.—In this paragraph, the term ‘directly related matters’ includes Federal crimes, other than those classified as Class B or C misdemeanors or infractions, that impede the investigation and prosecution, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses.

“(4) DISCLOSURE OF IDENTITY AND PROSECUTORIAL JURISDICTION.—An independent counsel’s identity and prosecutorial jurisdiction may not be made public except upon the request of the Attorney General or upon a determination of the division of the court that disclosure of the identity and prosecutorial jurisdiction of that independent counsel would be in the best interests of justice. In any event, the identity and prosecutorial jurisdiction of the independent counsel shall be made public when any indictment is returned, or any criminal information is filed, pursuant to the independent counsel’s investigation.

“(c) RETURN FOR FURTHER EXPLANATION.—Upon receipt of a notification under section 592 from the Attorney General that there are no substantial grounds to believe that further investigation is warranted with respect

to information received under this chapter, the division of the court shall have no authority to overrule this determination but may return the matter to the Attorney General for further explanation of the reasons for that determination.

“(d) VACANCIES.—If a vacancy in office arises by reason of the resignation, death, or removal of an independent counsel, the division of the court shall appoint an independent counsel to complete the work of the independent counsel whose resignation, death, or removal caused the vacancy, except that in the case of a vacancy arising by reason of the removal of an independent counsel, the division of the court may appoint an acting independent counsel to serve until any judicial review of the removal is completed.

“(e) ATTORNEYS’ FEES.—

“(1) AWARD OF FEES.—Upon the request of an individual who is the subject of an investigation conducted by an independent counsel pursuant to this chapter, the division of the court may, if no indictment is brought against that individual pursuant to the investigation, award reimbursement for those reasonable attorneys’ fees incurred by the individual during the investigation which would not have been incurred but for the requirements of this chapter. The division of the court shall notify the independent counsel who conducted the investigation and the Attorney General of any request for attorneys’ fees under this subsection.

“(2) EVALUATION OF FEES.—The division of the court shall direct the independent counsel and the Attorney General to file a written evaluation of any request for attorneys’ fees under this subsection, addressing—

“(A) the sufficiency of the documentation;

“(B) the need or justification for the underlying item;

“(C) whether the underlying item would have been incurred but for the requirements of this chapter; and

“(D) the reasonableness of the amount of money requested.

“(f) DISCLOSURE OF INFORMATION.—The division of the court may, subject to section 594(h)(2), allow the disclosure of any notification, application, or any other document, material, or memorandum supplied to the division of the court under this chapter.

“(g) AMICUS CURIAE BRIEFS.—When presented with significant legal issues, the division of the court may disclose sufficient information about the issues to permit the filing of timely amicus curiae briefs.

“§ 594. Authority and duties of an independent counsel

“(a) AUTHORITIES.—Notwithstanding any other provision of law, an independent counsel appointed under this chapter shall have, with respect to all matters in that independent counsel’s prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General’s personal action under section 2516 of title 18. Such investigative and prosecutorial functions and powers shall include—

“(1) conducting proceedings before grand juries and other investigations;

“(2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that the independent counsel considers necessary;

“(3) appealing any decision of a court in any case or proceeding in which the independent counsel participates in an official capacity;

“(4) reviewing all documentary evidence available from any source;

“(5) determining whether to contest the assertion of any testimonial privilege;

“(6) receiving appropriate national security clearances and, if necessary, contesting in court (including, where appropriate, participating in in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;

“(7) making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States attorney or the Attorney General;

“(8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1986 and the regulations issued thereunder, exercising the powers vested in a United States attorney or the Attorney General;

“(9) initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case, in the name of the United States; and

“(10) consulting with the United States attorney for the district in which any violation of law with respect to which the independent counsel is appointed was alleged to have occurred.

“(b) COMPENSATION.—

“(1) IN GENERAL.—An independent counsel appointed under this chapter shall receive compensation at the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5.

“(2) TRAVEL EXPENSES.—Except as provided in paragraph (3), an independent counsel and persons appointed under subsection (c) shall be entitled to the payment of travel expenses as provided by subchapter I of chapter 57 of title 5, United States Code, including travel, per diem, and subsistence expenses in accordance with section 5703 of title 5.

“(3) TRAVEL TO PRIMARY OFFICE.—

“(A) IN GENERAL.—After 1 year of service under this chapter, an independent counsel and persons appointed under subsection (c) shall not be entitled to the payment of travel, per diem, or subsistence expenses under subchapter I of chapter 57 of title 5, United States Code, for the purpose of commuting to or from the city in which the primary office of the independent counsel or person is located. The 1-year period may be extended for successive 6-month periods if the independent counsel and the division of the court certify that the payment is in the public interest to carry out the purposes of this chapter.

“(B) RELEVANT FACTORS.—In making any certification under this paragraph with respect to travel and subsistence expenses of an independent counsel or person appointed under subsection (c), that employee shall consider, among other relevant factors—

“(i) the cost to the Government of reimbursing those travel and subsistence expenses;

“(ii) the period of time for which the independent counsel anticipates that the activities of the independent counsel or person, as the case may be, will continue;

“(iii) the personal and financial burdens on the independent counsel or person, as the

case may be, of relocating so that the travel and subsistence expenses would not be incurred; and

“(iv) the burdens associated with appointing a new independent counsel, or appointing another person under subsection (c), to replace the individual involved who is unable or unwilling to so relocate.

“(c) ADDITIONAL PERSONNEL.—For the purposes of carrying out the duties of an office of independent counsel, an independent counsel may appoint, fix the compensation, and assign the duties of such employees as such independent counsel considers necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. Such employees shall be compensated at levels not to exceed those payable for comparable positions in the Office of United States Attorney for the District of Columbia under sections 548 and 550, but in no event shall any such employee be compensated at a rate greater than the rate of basic pay payable for level ES-4 of the Senior Executive Service Schedule under section 5382 of title 5, as adjusted for the District of Columbia under section 5304 of that title regardless of the locality in which an employee is employed.

“(d) ASSISTANCE OF DEPARTMENT OF JUSTICE.—

“(1) IN CARRYING OUT FUNCTIONS.—An independent counsel may request assistance from the Department of Justice in carrying out the functions of the independent counsel, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within that independent counsel's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform that independent counsel's duties. At the request of an independent counsel, prosecutors, administrative personnel, and other employees of the Department of Justice may be detailed to the staff of the independent counsel to the extent the number of staff so detailed is reasonably related to the number of staff ordinarily assigned by the Department to conduct an investigation of similar size and complexity.

“(2) PAYMENT OF AND REPORTS ON EXPENDITURES OF INDEPENDENT COUNSEL.—The Department of Justice shall pay all costs relating to the establishment and operation of any office of independent counsel. The Attorney General shall submit to the Congress, not later than 30 days after the end of each fiscal year, a report on amounts paid during that fiscal year for expenses of investigations and prosecutions by independent counsel. Each such report shall include a statement of all payments made for activities of independent counsel but may not reveal the identity or prosecutorial jurisdiction of any independent counsel which has not been disclosed under section 593(b)(4).

“(e) REFERRAL OF DIRECTLY RELATED MATTERS TO AN INDEPENDENT COUNSEL.—An independent counsel may ask the Attorney General or the division of the court to refer to the independent counsel only such matters that are directly related to the independent counsel's prosecutorial jurisdiction, and the Attorney General or the division of the court, as the case may be, may refer such matters. If the Attorney General refers a matter to an independent counsel on the Attorney General's own initiative, the independent counsel may accept that referral only if the matter directly relates to the independent counsel's prosecutorial jurisdiction. If the Attorney General refers any mat-

ter to the independent counsel pursuant to the independent counsel's request, or if the independent counsel accepts a referral made by the Attorney General on the Attorney General's own initiative, the independent counsel shall so notify the division of the court.

“(f) COMPLIANCE WITH POLICIES OF THE DEPARTMENT OF JUSTICE.—

“(1) IN GENERAL.—An independent counsel shall comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws except when that policy requires the specific approval of the Attorney General or another Department of Justice official. If a policy requires the approval of the Attorney General or other Department of Justice official, an independent counsel is encouraged to consult with the Attorney General or other official. To identify and understand these policies and policies under subsection (1)(1)(B), the independent counsel shall consult with the Department of Justice.

“(2) NATIONAL SECURITY.—An independent counsel shall comply with guidelines and procedures used by the Department in the handling and use of classified material.

“(3) RELIEF FROM A VIOLATION OF POLICIES.—

“(A) IN GENERAL.—A person who is a target, witness, or defendant in, or otherwise directly affected by, an investigation by an independent counsel and who has reason to believe that the independent counsel is violating a written policy of the Department of Justice material to the independent counsel's investigation, may ask the Attorney General to determine whether the independent counsel has violated that policy. The Attorney General shall respond in writing within 30 days.

“(B) RELIEF.—If the Attorney General determines that the independent counsel has violated a written policy of the Department of Justice material to the investigation by the independent counsel pursuant to subparagraph (A), the Attorney General may ask the division of the court to order the independent counsel to comply with that policy, and the division of the court may order appropriate relief.

“(g) DISMISSAL OF MATTERS.—The independent counsel shall have full authority to dismiss matters within the independent counsel's prosecutorial jurisdiction without conducting an investigation or at any subsequent time before prosecution, if to do so would be consistent with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

“(h) REPORTS BY INDEPENDENT COUNSEL.—

“(1) REQUIRED REPORTS.—An independent counsel shall—

“(A) file with the division of the court, with respect to the 6-month period beginning on the date of his or her appointment, and with respect to each 6-month period thereafter until the office of that independent counsel terminates, a report which identifies and explains major expenses, and summarizes all other expenses, incurred by that office during the 6-month period with respect to which the report is filed, and estimates future expenses of that office; and

“(B) before the termination of the independent counsel's office under section 596(b), file a final report with the division of the court, setting forth only the following:

“(i) the jurisdiction of the independent counsel's investigation;

“(ii) a list of indictments brought by the independent counsel and the disposition of

each indictment, including any verdicts, pleas, convictions, pardons, and sentences; and

“(iii) a summary of the expenses of the independent counsel’s office.

“(2) DISCLOSURE OF INFORMATION IN REPORTS.—The division of the court may release to the Congress, the public, or any appropriate person, those portions of a report made under this subsection as the division of the court considers appropriate. The division of the court shall make those orders as are appropriate to protect the rights of any individual named in that report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a final report filed under paragraph (1)(B) available to any individual named in that report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that the individual may submit. Such comments and factual information, in whole or in part, may, in the discretion of the division of the court, be included as an appendix to the final report.

“(3) PUBLICATION OF REPORTS.—At the request of an independent counsel, the Public Printer shall cause to be printed any report previously released to the public under paragraph (2). The independent counsel shall certify the number of copies necessary for the public, and the Public Printer shall place the cost of the required number to the debit of the independent counsel. Additional copies shall be made available to the public through the depository library program and Superintendent of Documents sales program pursuant to sections 1702 and 1903 of title 44.

“(i) INDEPENDENCE FROM DEPARTMENT OF JUSTICE.—Each independent counsel appointed under this chapter, and the persons appointed by that independent counsel under subsection (c), are employees of the Department of Justice for purposes of sections 202 through 209 of title 18.

“(j) STANDARDS OF CONDUCT APPLICABLE TO INDEPENDENT COUNSEL, PERSONS SERVING IN THE OFFICE OF AN INDEPENDENT COUNSEL, AND THEIR LAW FIRMS.—

“(1) RESTRICTIONS ON EMPLOYMENT WHILE INDEPENDENT COUNSEL AND APPOINTEES ARE SERVING.—

“(A) INDEPENDENT COUNSEL.—During the period in which an independent counsel is serving under this chapter—

“(i) that independent counsel shall have no other paid employment; and

“(ii) any person associated with a firm with which that independent counsel is associated may not represent in any matter any person involved in any investigation or prosecution under this chapter.

“(B) OTHER PERSONS.—During the period in which any person appointed by an independent counsel under subsection (c) is serving in the office of independent counsel, that person may not represent in any matter any person involved in any investigation or prosecution under this chapter.

“(2) POST EMPLOYMENT RESTRICTIONS ON INDEPENDENT COUNSEL AND APPOINTEES.—Each independent counsel and each person appointed by that independent counsel under subsection (c) may not—

“(A) for 3 years following the termination of the service under this chapter of that independent counsel or appointed person, as the case may be, represent any person in any matter if that individual was the subject of an investigation or prosecution under this chapter that was conducted by that independent counsel; or

“(B) for 1 year following the termination of the service under this chapter of that inde-

pendent counsel or appointed person, as the case may be, represent any person in any matter involving any investigation or prosecution under this chapter.

“(3) ONE-YEAR BAN ON REPRESENTATION BY MEMBERS OF FIRMS OF INDEPENDENT COUNSEL.—Any person who is associated with a firm with which an independent counsel is associated or becomes associated after termination of the service of that independent counsel under this chapter may not, for 1 year following that termination, represent any person in any matter involving any investigation or prosecution under this chapter.

“(4) DEFINITIONS.—For purposes of this subsection—

“(A) the term ‘firm’ means a law firm whether organized as a partnership or corporation; and

“(B) a person is ‘associated’ with a firm if that person is an officer, director, partner, or other member or employee of that firm.

“(5) ENFORCEMENT.—The Attorney General and the Director of the Office of Government Ethics have authority to enforce compliance with this subsection. The designated agency ethics official for the Department of Justice shall be the ethics adviser for the independent counsel and employees of the independent counsel.

“(k) CUSTODY OF RECORDS OF AN INDEPENDENT COUNSEL.—

“(1) TRANSFER OF RECORDS.—Upon termination of the office of an independent counsel, that independent counsel shall transfer to the Archivist of the United States all records which have been created or received by that office. Before this transfer, the independent counsel shall clearly identify which of these records are subject to rule 6(e) of the Federal Rules of Criminal Procedure as grand jury materials and which of these records have been classified as national security information. Any records which were compiled by an independent counsel and, upon termination of the independent counsel’s office, were stored with the division of the court or elsewhere before the enactment of the Independent Counsel Reauthorization Act of 1997, shall also be transferred to the Archivist of the United States by the division of the court or the person in possession of those records.

“(2) MAINTENANCE, USE, AND DISPOSAL OF RECORDS.—Records transferred to the Archivist under this chapter shall be maintained, used, and disposed of in accordance with chapters 21, 29, and 33 of title 44.

“(3) ACCESS TO RECORDS.—

“(A) IN GENERAL.—Subject to paragraph (4), access to the records transferred to the Archivist under this chapter shall be governed by section 552 of title 5.

“(B) ACCESS BY DEPARTMENT OF JUSTICE.—The Archivist shall, upon written application by the Attorney General, disclose any such records to the Department of Justice for purposes of an ongoing law enforcement investigation or court proceeding, except that, in the case of grand jury materials, those records shall be so disclosed only by order of the court of jurisdiction under rule 6(e) of the Federal Rules of Criminal Procedure.

“(C) EXCEPTION.—Notwithstanding any restriction on access imposed by law, the Archivist and persons employed by the National Archives and Records Administration who are engaged in the performance of normal archival work shall be permitted access to the records transferred to the Archivist under this chapter.

“(4) RECORDS PROVIDED BY CONGRESS.—Records of an investigation conducted by a

committee of the House of Representatives or the Senate which are provided to an independent counsel to assist in an investigation or prosecution conducted by that independent counsel—

“(A) shall be maintained as a separate body of records within the records of the independent counsel; and

“(B) shall, after the records have been transferred to the Archivist under this chapter, be made available, except as provided in paragraph (3) (B) and (C), in accordance with the rules governing release of the records of the House of Congress that provided the records to the independent counsel.

Subparagraph (B) shall not apply to those records which have been surrendered pursuant to grand jury or court proceedings.

“(l) COST AND ADMINISTRATIVE SUPPORT.—

“(1) COST CONTROLS.—

“(A) IN GENERAL.—An independent counsel shall—

“(i) conduct all activities with due regard for expense;

“(ii) authorize only reasonable and lawful expenditures; and

“(iii) promptly, upon taking office, assign to a specific employee the duty of certifying that expenditures of the independent counsel are reasonable and made in accordance with law.

“(B) LIABILITY FOR INVALID CERTIFICATION.—An employee making a certification under subparagraph (A)(iii) shall be liable for an invalid certification to the same extent as a certifying official certifying a voucher is liable under section 3528 of title 31.

“(C) DEPARTMENT OF JUSTICE POLICIES.—An independent counsel shall comply with the established policies of the Department of Justice respecting expenditures of funds.

“(2) BUDGET.—The independent counsel, after consulting with the Attorney General, shall, within 90 days of appointment, submit a budget for the first year of the investigation and, on the anniversary of the appointment, for each year thereafter to the Attorney General and the General Accounting Office. The General Accounting Office shall review the budget and submit a written appraisal of the budget to the independent counsel and the Committees on Governmental Affairs and Appropriations of the Senate and the Committees on the Judiciary and Appropriations of the House of Representatives.

“(3) ADMINISTRATIVE SUPPORT.—The Director of the Administrative Office of the United States Courts shall provide administrative support and guidance to each independent counsel. No officer or employee of the Administrative Office of the United States Courts shall disclose information related to an independent counsel’s expenditures, personnel, or administrative acts or arrangements without the authorization of the independent counsel.

“(4) OFFICE SPACE.—The Administrator of General Services, in consultation with the Director of the Administrative Office of the United States Courts, shall promptly provide appropriate office space for each independent counsel. The office space shall be within a Federal building unless the Administrator of General Services determines that other arrangements would cost less. Until the office space is provided, the Administrative Office of the United States Courts shall provide newly appointed independent counsels immediately upon appointment with appropriate, temporary office space, equipment, and supplies.

“(m) EXPEDITED JUDICIAL CONSIDERATION AND REVIEW.—It shall be the duty of the

courts of the United States to advance on the docket and to expedite to the greatest extent possible the disposition of matters relating to an investigation and prosecution by an independent counsel under this chapter consistent with the purposes of this chapter.

“§ 595. Congressional oversight

“(a) OVERSIGHT OF CONDUCT OF INDEPENDENT COUNSEL.—

“(1) CONGRESSIONAL OVERSIGHT.—The appropriate committees of the Congress shall have oversight jurisdiction with respect to the official conduct of any independent counsel appointed under this chapter, and the independent counsel shall have the duty to cooperate with the exercise of that oversight jurisdiction.

“(2) REPORTS TO CONGRESS.—An independent counsel appointed under this chapter shall submit to the Congress annually a report on the activities of the independent counsel, including a description of the progress of any investigation or prosecution conducted by the independent counsel. The report may omit any matter that in the judgment of the independent counsel should be kept confidential, but shall provide information adequate to justify the expenditures that the office of the independent counsel has made.

“(b) OVERSIGHT OF CONDUCT OF ATTORNEY GENERAL.—Within 15 days after receiving an inquiry about a particular case under this chapter, which is a matter of public knowledge, from a committee of the Congress with jurisdiction over this chapter, the Attorney General shall provide the following information to that committee with respect to the case:

“(1) When the information about the case was received.

“(2) Whether a preliminary investigation is being conducted, and if so, the date it began.

“(3) Whether an application for the appointment of an independent counsel or a notification that further investigation is not warranted has been filed with the division of the court, and if so, the date of that filing.

“§ 596. Removal of an independent counsel; termination of office

“(a) REMOVAL; REPORT ON REMOVAL.—

“(1) GROUNDS FOR REMOVAL.—

“(A) IN GENERAL.—An independent counsel appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for good cause, physical or mental disability (if not prohibited by law protecting persons from discrimination on the basis of such a disability), or any other condition that impairs the performance of that independent counsel's duties.

“(B) GOOD CAUSE.—In this paragraph, the term ‘good cause’ includes—

“(i) a knowing and material failure to comply with written Department of Justice policies relevant to the conduct of a criminal investigation; and

“(ii) an actual personal, financial, or political conflict of interest.

“(2) REPORT TO DIVISION OF THE COURT AND CONGRESS.—If an independent counsel is removed from office, the Attorney General shall promptly submit to the division of the court and the Committees on the Judiciary of the Senate and the House of Representatives a report specifying the facts found and the ultimate grounds for the removal. The committees shall make available to the public that report, except that each committee may, if necessary to protect the rights of any individual named in the report or to pre-

vent undue interference with any pending prosecution, postpone or refrain from publishing any or all of the report. The division of the court may release any or all of the report in accordance with section 594(h)(2).

“(3) JUDICIAL REVIEW OF REMOVAL.—An independent counsel removed from office may obtain judicial review of the removal in a civil action commenced in the United States District Court for the District of Columbia. A member of the division of the court may not hear or determine any such civil action or any appeal of a decision in any such civil action. The independent counsel may be reinstated or granted other appropriate relief by order of the court.

“(b) TERMINATION OF OFFICE.—

“(1) TERMINATION BY ACTION OF INDEPENDENT COUNSEL.—An office of independent counsel shall terminate when—

“(A) the independent counsel notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of the independent counsel or accepted by the independent counsel under section 594(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete those investigations and prosecutions; and

“(B) the independent counsel files a final report in compliance with section 594(h)(1)(B).

“(2) TERMINATION BY DIVISION OF THE COURT.—The division of the court, either on its own motion or upon the request of the Attorney General, may terminate an office of independent counsel at any time, on the ground that the investigation of all matters within the prosecutorial jurisdiction of the independent counsel or accepted by the independent counsel under section 594(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete those investigations and prosecutions. At the time of that termination, the independent counsel shall file the final report required by section 594(h)(1)(B). If the Attorney General has not made a request under this paragraph, the division of the court shall determine on its own motion whether termination is appropriate under this paragraph no later than 2 years after the appointment of an independent counsel.

“(3) TERMINATION AFTER 2 YEARS.—

“(A) GENERAL RULE.—Except as provided in subparagraph (B), the term of an independent counsel shall terminate at the expiration of 2 years after the date of appointment of the independent counsel and any matters under investigation by the independent counsel shall be transferred to the Attorney General.

“(B) EXCEPTIONS.—

“(i) GOOD CAUSE.—An independent counsel may petition the division of the court to extend the investigation of the independent counsel for up to 1 year for good cause. The division of the court shall determine whether the grant of such an extension is warranted and determine the length of each extension.

“(ii) DILATORY TACTICS.—If the investigation of an independent counsel was delayed by dilatory tactics by persons that could provide evidence that would significantly assist the investigation, an independent counsel may petition the division of the court to extend the investigation of the independent counsel for an additional period of time equal to the amount of time lost by the dilatory tactics. If the division of the court finds that dilatory tactics did delay the investigation, the division of the court shall extend

the investigation for a period equal to the delay.

“(c) AUDITS.—

“(1) IN GENERAL.—On or before June 30 of each year, an independent counsel shall prepare a statement of expenditures for the 6 months that ended on the immediately preceding March 31. On or before December 31 of each year, an independent counsel shall prepare a statement of expenditures for the fiscal year that ended on the immediately preceding September 30. An independent counsel whose office is terminated prior to the end of the fiscal year shall prepare a statement of expenditures on or before the date that is 90 days after the date on which the office is terminated.

“(2) COMPTROLLER GENERAL REVIEW.—The Comptroller General shall—

“(A) conduct a financial review of a mid-year statement and a financial audit of a year-end statement and statement on termination; and

“(B) report the results to the Committee on the Judiciary, Committee on Governmental Affairs, and Committee on Appropriations of the Senate and the Committee on the Judiciary, Committee on Government Reform, and Committee on Appropriations of the House of Representatives not later than 90 days following the submission of each statement.

“§ 597. Relationship with Department of Justice

“(a) SUSPENSION OF OTHER INVESTIGATIONS AND PROCEEDINGS.—Whenever a matter is in the prosecutorial jurisdiction of an independent counsel or has been accepted by an independent counsel under section 594(e), the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding that matter, except to the extent required by section 594(d)(1), and except insofar as the independent counsel agrees in writing that the investigation or proceedings may be continued by the Department of Justice.

“(b) PRESENTATION AS AMICUS CURIAE PERMITTED.—Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making a presentation as amicus curiae to any court as to issues of law raised by any case or proceeding in which an independent counsel participates in an official capacity or any appeal of such a case or proceeding.

“§ 598. Severability

“If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of that provision to other persons not similarly situated or to other circumstances shall not be affected by that invalidation.

“§ 599. Termination of effect of chapter

“This chapter shall cease to be effective 5 years after the date of enactment of the Independent Counsel Reform Act of 1999, except that this chapter shall continue in effect with respect to then pending matters before an independent counsel that in the judgment of that counsel require the continuation until that independent counsel determines those matters have been completed.”

SEC. 3. ASSIGNMENT OF JUDGES TO DIVISION TO APPOINT INDEPENDENT COUNSELS.

Section 49 of title 28, United States Code, is amended to read as follows:

“§ 49. Assignment of judges to division to appoint independent counsels

“(a) IN GENERAL.—Beginning with the 3-year period commencing on the date of the

enactment of the Independent Counsel Reform Act of 1999, 3 judges shall be assigned for each successive 3-year period to a division of the United States Court of Appeals for the District of Columbia to be the division of the court for the purpose of appointing independent counsels. The Clerk of the United States Court of Appeals for the District of Columbia Circuit shall serve as the clerk of the division of the court and shall provide such services as are needed by the division of the court.

“(b) OTHER JUDICIAL ASSIGNMENTS.—Except as provided in subsection (e), assignment to the division of the court shall not be a bar to other judicial assignments during the term of the division of the court.

“(c) DESIGNATION AND ASSIGNMENT.—The Chief Justice of the United States shall designate and assign by a lottery of all circuit court judges, 3 circuit court judges 1 of whom shall be a judge of the United States Court of Appeals for the District of Columbia, to the division of the court. Not more than 1 judge may be named to the division of the court from a particular court.

“(d) VACANCY.—Any vacancy in the division of the court shall be filled only for the remainder of the 3-year period in which that vacancy occurs and in the same manner as initial assignments to the division of the court were made.

“(e) RECUSAL.—Except as otherwise provided in chapter 40 of this title, no member of the division of the court who participated in a function conferred on the division of the court under chapter 40 of this title involving an independent counsel shall be eligible to participate in any judicial proceeding concerning a matter that—

“(1) involves that independent counsel while the independent counsel is serving in that office; or

“(2) involves the exercise of the independent counsel's official duties, regardless of whether the independent counsel is still serving in that office.”.

SUMMARY OF INDEPENDENT COUNSEL STATUTE

1. Limits applicability of the statute to the President, Vice President, members of the Cabinet, and the President's Chief of Staff.

2. Eliminates the provision which allowed the AG to begin a preliminary investigation and appoint an IC with regard to any individual when she believed that investigating this person may result in a personal, financial or political conflict of interest.

3. Eliminates the provision which allowed the AG to begin a preliminary investigation and appoint an IC to investigate a Member of Congress.

4. Grants the AG the power to convene a grand jury and issue subpoenas during the preliminary investigation.

5. Increases the length of the preliminary investigation from 90 to 120 days and increases the length of the extension from 60 to 90 days (to allow more time given the AG's new powers and the higher standard for appointing an IC).

6. Lowers the standard for not appointing an IC due to the suspect's lack of mens rea from “clear and convincing evidence” that he/she lacked the requisite state of mind to a “preponderance of evidence” that he/she lacked the requisite state of mind.

7. Changes the standard necessary for appointing an IC from “reasonable grounds to believe that further investigation is warranted” to “substantial grounds to believe that further investigation is warranted.”

8. Requires that the IC be selected from a list of candidates comprised of 5 individuals

recommended by the chief judge of each Federal circuit.

9. Provides that an IC shall have “appropriate experience including, to the extent practicable, prosecutorial experience.”

10. Provides that an IC shall have “no actual or apparent personal, financial or political conflict of interest.”

11. Requires that the IC conduct the investigation on a full-time basis.

12. Eliminates the provision which allows the AG to expand the jurisdiction of an independent counsel beyond his/her original mandate (such as the additions of Filegate, Travelgate, etc. to Starr's original White-water mandate).

13. Provides that the IC can investigate only topics in his original jurisdiction or those “directly related” thereto.

14. Provides that DOJ employees can be detailed to the IC in a number which is “reasonably related to the number of staff ordinarily assigned by the Department to conduct an investigation of similar size and complexity.”

15. Eliminates the provision which provided that the IC need not comply with written or established DOJ policies “to the extent doing so would be inconsistent with the purposes” of the statute.

16. Provides a mechanism for aggrieved parties to appeal directly to the AG when they believe that the IC has failed to observe written DOJ policies or guidelines. If the AG determined that the IC has in fact violated the guidelines in a manner that has caused a cognizable harm to the complaining party, the AG may file a motion with the Division of the Court seeking appropriate injunctive or declaratory relief.

17. Limits the IC's final report to one which sets forth only a list of indictments brought by the IC, the outcomes of each indictment, and a summary of expenses.

18. Provides that the IC shall submit an annual budget to the AG and the GAO. The GAO shall review the budget and submit a written appraisal of the budget to the IC and the House and Senate Governmental Affairs Committee and Appropriations Committee.

19. Provides for expedited review of all matters relating to an investigation and a prosecution by an IC.

20. Deletes the requirement of a report to Congress of any substantial and credible information that may constitute grounds for an impeachment.

21. Defines the “good cause” for which an AG can remove an IC as a physical or mental disability, a knowing, willful and material failure to comply with relevant, written Department of Justice guidelines, and a personal, financial or political conflict of interest.

22. Provides a 2 year time limit for IC investigation. Empowers the Special Division of the Court to extend this period for additional one year periods for good cause, and to extend this period to make up for dilatory tactics.

23. Provides that the judges of the Special Division of the Court shall be chosen through a lottery of circuit judges (instead of the current system where the Chief Justice chooses them). Extends period of service on the Special Division from 2 to 3 years.

INDEPENDENT COUNSEL REFORM ACT OF 1999— SECTION-BY-SECTION SUMMARY

Sec. 1: Short Title: “Independent Counsel Reform Act of 1999”.

Sec. 2: Independent Counsel Statute

United States Code Chapter 40, title 28 is replaced by this Act.

§ 591. Applicability of provisions of this chapter

The Attorney General shall conduct a preliminary investigation whenever there is specific and credible evidence that a covered person may have violated Federal criminal law. Covered persons include the President, the Vice President, the President's cabinet, and the Chief of Staff.

The Attorney General shall determine the need for a preliminary investigation based only on the specificity of the information and the credibility of the source. The Attorney General shall determine whether grounds to investigate exist within 30 days of receiving the information.

Before making any other determinations, the Attorney General shall determine if recusal is necessary and submit this determination in writing to the special court.

§ 592. Preliminary investigation and application for appointment of an independent counsel

The Attorney General shall make a determination regarding the appointment of an independent counsel within 120 days after the preliminary investigation is commenced. The special court shall be notified of the commencement of that preliminary investigation.

During the preliminary investigation, the Attorney General shall have no authority to plea bargain or grant immunity, but will possess the authority to convene grand juries and issue subpoenas.

The Attorney General shall not base a determination to decline the appointment of an independent counsel upon the state of mind of the target unless there is a preponderance of evidence that the target lacked the requisite criminal intent.

At the expiration of the 120 day period, the Attorney General may apply to the special court for a single extension of not more than 90 days.

If the Attorney General determines that there are no substantial grounds to believe that further investigation is warranted, the Attorney General shall notify the special court. Notification shall consist of a summary of the information received and the results of the preliminary investigation.

The Attorney General shall apply to the special court for the appointment of an independent counsel if the Attorney General determines there are substantial grounds to believe that further investigation is warranted or the 120 day period granted for preliminary investigation has elapsed without proper notification to the special court.

In making this determination, the Attorney General shall comply with the written and established policies of the Department of Justice.

If the Attorney General receives additional information after notifying the special court of a decision not to seek an independent counsel, the Attorney General shall conduct an additional preliminary investigation for a period of no more than 120 days.

The Attorney General's determination on the appointment of an independent counsel shall not be reviewable by any court.

Congress may request in writing that the Attorney General apply for the appointment of an independent counsel. No later than 30 days after a congressional request, the Attorney General must report on the status of the preliminary investigation or the reasons for not investigating.

If the preliminary investigation is initiated in response to a congressional request, any communication to the special court shall be supplied to the persons requesting

the investigation. If no application for the appointment of an independent counsel is made, the Attorney General shall submit a report explaining the decision.

§ 593. Duties of the division of the court

Upon receipt of an application, the special court shall appoint an appropriate independent counsel and define the independent counsel's prosecutorial jurisdiction. The appointment shall be made from the list of candidates comprised of five individuals recommended annually by the chief judge of each federal circuit.

An independent counsel shall have appropriate experience, including prosecutorial experience if practical. An independent counsel shall have no actual or apparent conflict of interest and shall conduct the investigation on a full-time basis and shall not hold any office of profit or trust under the United States.

The independent counsel shall have the authority to fully investigate and prosecute the subject matter of the appointment and all matters directly related to the prosecutorial jurisdiction and the proper investigation of the subject matter. "Directly related" includes federal crimes, other than certain misdemeanors, that impede the investigation such as perjury and obstruction of justice.

The identity and prosecutorial jurisdiction of the independent counsel shall not be made public until any indictment is returned or criminal information is filed unless the Attorney General requests such public disclosure or the special court determines it is in the best interest of justice.

The special court shall have no authority to overrule the determination of the Attorney General not to investigate further.

If a vacancy in office arises, the special court shall appoint another independent counsel to complete the work. If the vacancy arises by reason of removal, the appointment shall be of a temporary nature until any judicial review of the removal is completed.

If no indictment is brought against the subject of the investigation, the special court may award the subject reasonable attorneys' fees. The independent counsel and the Attorney General shall determine if the fees requested are reasonable.

§ 594. Authority and duties of an independent counsel

The independent counsel shall have full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice except that the Attorney General shall exercise control over matters that specifically require the Attorney General's personal attention under section 2516 of title 18. These include the following: Conducting proceedings before grand juries; engaging in any litigation considered necessary; appealing any decision of a court in which the independent counsel participates officially; reviewing all documentary evidence; determination of an assertion of testimonial privilege; receiving necessary national security clearances; application for a grant of immunity to witnesses, or for warrants, subpoenas or other court orders; exercising the authority of the Attorney General for the purposes of section 6003, 6004 and 6005 of title 18, and section 6103 of the Internal Revenue Code of 1986; inspecting, obtaining or using any tax return; initiating and conducting prosecutions in any court, framing and signing indictments, filing informations and handling all aspects of any case in the name of the United States; and consulting with the

United States Attorney for the appropriate district.

Travel expenses shall be compensated. After one year of service, commuting costs shall not be reimbursed unless the special court certifies that it is in the public interest. Relevant factors include cost of reimbursement, time period of office, burden of relocation and burden of appointing a different independent counsel.

An independent counsel may request assistance from the Department of Justice, which shall be provided within reason. The costs relating to the establishment and operation of any office of independent counsel shall be paid through the Department of Justice and reported to the Congress within 30 days of the end of the fiscal year.

The Attorney General or the special court may refer "directly related" matters to the independent counsel, who can also request that such matters be referred.

An independent counsel shall comply with the written and established policies of the Department of Justice, except when such policies require the approval of the Department of Justice. The independent counsel shall comply with all guidelines dealing with classified material.

A person who is a target, witness or defendant or otherwise directly affected by the investigation, who has reason to believe that the independent counsel is violating a written Department of Justice policy that is material to the investigation, may ask the Attorney General to investigate whether there has been a violation. The Attorney General shall respond in writing within 30 days. If the Attorney General determines that there has been a violation of written policy material to the investigation, the Attorney General may ask the special court to order appropriate relief.

The independent counsel may dismiss matters within his or her prosecutorial jurisdiction if it is consistent with Department of Justice policy.

The independent counsel shall report to the special court every 6 months and before termination of the office. The 6-month period report shall include explanations of expenses, and estimates of future expenses. The termination report shall include summaries of expenses and disposition of legal actions taken.

The special court may release appropriate sections of the reports if it is appropriate to protect the rights of any individual named in the report. At the request of an independent counsel, past reports may be printed and made available to the public.

The independent counsel may have no other paid employment and any person with an associated firm may not represent anyone under investigation by the independent counsel. Appointees may not represent anyone under investigation. The independent counsel and appointees may not represent a subject of the investigation for three years. Those parties and an associated law firm are banned for one year from representing any person in any matter involving this chapter.

The independent counsel shall conduct all activities with due regard for expenses and authorize only reasonable and lawful expenditures. An appointee making an invalid certification will be held liable. An independent counsel shall comply with the established expenditure policies of the Department of Justice.

The independent counsel shall within 90 days of appointment submit a budget for the first year, and thereafter on an annual basis. This budget shall be submitted to the Attor-

ney General and the General Accounting Office ("GAO"). The GAO shall review the annual budget and submit a written appraisal to Congress.

It shall be the duty of the courts of the United States to expedite matters relating to an investigation and prosecution by an independent counsel.

§ 595. Congressional oversight

The appropriate committees of Congress shall have oversight jurisdiction. The independent counsel shall submit annually a report on the activities of the independent counsel omitting confidential matters, but sufficient to justify the expenditures.

Within 15 days of a request from an appropriate congressional committee, the Attorney General shall provide the following: when the information regarding the case was received, the starting date of the preliminary investigation, and whether an application for an independent counsel or notification of no further investigation has been filed.

§ 596. Removal of an independent counsel; termination of office

An independent counsel may only be removed from office by the Attorney General for "good cause," physical or mental disability, or any other condition that impairs the performance of the independent counsel's duties. Good cause include a knowing and material failure to comply with the written policies of the Department of Justice, or an actual conflict of interest.

Upon removal of an independent counsel, the Attorney General shall submit a report to the special court and the appropriate congressional committees specifying the facts found and the ultimate grounds for the removal. This report shall be made public with necessary protections for the rights of any named individual.

The independent counsel may request judicial review of his or her removal. Remedies may include reinstatement or other appropriate relief.

The independent counsel shall notify the Attorney General when the matters within the prosecutorial jurisdiction have been completed, or completed to the point that it would be appropriate for the Department of Justice to complete those investigations. The independent counsel shall file the final report. The special court may terminate an office of the independent counsel on the same grounds within two years of appointment and thereafter on an annual basis.

The term of an independent counsel shall terminate after two years except for good cause or dilatory tactics. The special court shall review all requests for extensions and may grant an extension for additional one year periods.

By June 30th and December 31st of each year, the independent counsel shall prepare a statement of expenditures covering the previous 6 months. The Comptroller General shall conduct a financial review of the statements and submit the results to the appropriate congressional committees.

§ 597. Relationship with the Department of Justice

Whenever a matter is within the prosecutorial jurisdiction of the independent counsel, the Department of Justice shall suspend all investigation, except if the independent counsel agrees in writing that the matter may be continued by the Department of Justice.

Nothing in this chapter shall prevent either the Attorney General or the Solicitor General from presenting an amicus curiae

brief on matters involving the jurisdiction of the independent counsel.

§ 598. Severability

If any provision of this chapter is held invalid, the remainder of this chapter not similarly situated shall not be affected by that invalidation.

§ 599. Termination of effect of chapter

This chapter shall sunset five years after the date of enactment.

Sec. 3: Assignment of Judges to Division to Appoint Independent Counsels

Section 49 of title 28, United States Code, is amended to read as follows:

§ 49. Assignment of judges to division to appoint independent counsel

Three judges shall be assigned for a period of three years to a division of the United States Court of Appeals for the District of Columbia to be the special court for the purpose of appointing independent counsels. This shall not be a bar to other judicial assignments. Assignment shall be by lottery. Vacancies shall be filled by lottery only for the remainder of the assignment. These judges shall not be eligible to participate in any judicial proceeding concerning a matter that involves the independent counsel while the independent counsel is in office, or a matter involving the exercise of the independent counsel's official duties.

Mr. SPECTER. Mr. President, I ask unanimous consent for 2 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I have sought recognition for 2 additional minutes to comment about an amendment which I will seek to add when this statute is considered. It is one where I am proceeding by myself. That is a provision to have a mandamus action to compel the Attorney General to appoint an independent counsel where there is an abuse of discretion. It is my view that independent counsel should have been appointed on campaign finance reform, as recommended by FBI Director Louis Freeh and special counsel Charles LaBella.

I will ask consent that at the conclusion of the remarks which I am now making, there be included a draft complaint which I had prepared to compel the appointment of independent counsel.

This draft complaint was never filed because at each stage where it appeared warranted to pursue mandamus, the Attorney General would take some action on extension of investigation, and then it became interwoven with the impeachment proceedings so the time was never quite right. There was a complex issue on standing, although at one time we almost had an agreement by the chairman of the House Judiciary Committee and the chairman of the Senate Judiciary Committee to have their sponsorship, perhaps if not all of the Republicans in each committee, a majority of the Republicans, which would have provided standing for a report and, by analogy, perhaps, standing for such a lawsuit.

I do believe that when independent counsel is again considered and this

statute sponsored by the four of us will be ready, willing, and able to proceed, the issue of a mandamus action ought to be considered.

I ask unanimous consent that the text of this draft complaint be printed in the RECORD to preserve the factual allegations for later reference on the general principle of the need for a mandamus provision.

There being no objection, the complaint was ordered to be printed in the RECORD, as follows:

[United States District Court for the District of Columbia, Civil Action No.]

PLAINTIFFS *vs.* THE HONORABLE JANET RENO, ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, DEFENDANT.

COMPLAINT

Plaintiffs, by counsel, complain as follows: COME NOW Plaintiffs, and for cause of action against Defendant, allege as follows:

JURISDICTION

1. This court has jurisdiction by reason of (1) 28 U.S.C. section 1361, which confers jurisdiction over any action in the nature of mandamus to compel an officer or employee of the United States, or any agency thereof, to perform a duty owed to the plaintiff; (2) 5 U.S.C. section 702, which confers jurisdiction over any action to compel an agency of the United States to perform a duty which has been unreasonably withheld; and (3) by reason of its general Federal Question jurisdiction under 28 U.S.C. section 1331.

THE PARTIES AND STATUTORY BACKGROUND

2. This is an action to compel the Attorney General of the United States of America to comply with statutory provisions set forth in the Independent Counsel Statute, 28 U.S.C. sections 591-599 (hereinafter "The Act").

3. [Plaintiffs comprise a majority of the Republican members of the House and Senate Judiciary Committees.] Section 592(g) of the Act provides that a majority of the majority party members of the House or Senate Judiciary Committee shall have the authority to request that the Attorney General apply for appointment of an independent counsel.

4. Defendant is the Attorney General of the United States and is charged with the duty of carrying out the provisions of the Act by reason of the requirements set forth in 28 U.S.C. sections 591-595.

5. Section 591 of the Act provides that the Attorney General "shall" conduct a preliminary investigation whenever the Attorney General receives specific and credible information which is "sufficient to constitute grounds to investigate" whether a covered person under the Act "may have violated" any Federal criminal law. Such covered persons include the President and the Vice President.

6. Section 592(c) of the Act provides that the Attorney General "shall" apply to the special division of the circuit court for appointment of an independent counsel if the Attorney General determines, after reviewing specific and credible evidence, that there are "reasonable grounds to believe that further investigation is warranted."

FACTUAL BACKGROUND

7. The following factual background sets forth specific and credible information sufficient to require the Attorney General to apply for appointment of an independent counsel under the provisions of the Act cited

above. This information has been organized as follows:

I. *National Security Information Withheld from the President.* The Attorney General found that there was sufficient evidence of illegal activity by the President to justify withholding certain national security information from him. Since the evidence was sufficiently compelling to justify such an extreme denial of presidential prerogative, the same evidence is sufficiently specific and credible so as to warrant appointment of independent counsel.

II. *Criminal Violations.* The Attorney General has ignored specific and credible evidence of at least two violations that warrant appointment of an independent counsel to investigate the President and/or the Vice President:

A. *Coordination between the President and the DNC.* There is specific and credible evidence that President Clinton engaged in illegal coordination of expenditures by the DNC on its television advertising campaign.

B. *Conspiracy to Violate and Evade the Campaign Finance Laws.* There is specific and credible evidence that the President, Vice President, and other high-ranking officials acted in concert to violate the Federal Election Campaign Act.

III. *The Failure of the Department of Justice's Investigation and Estoppel of the Attorney General.*

A. *Failure of the Department of Justice's Campaign Finance Investigation.* After over one year of investigation, the Justice Department's campaign finance task force has suffered a series of embarrassments and can point to little visible achievement. If a credible investigation is to take place, it must be done by an independent counsel.

B. *Estoppel of the Attorney General.* Attorney General Reno has stated before Congress that there is an inherent conflict whenever senior Executive Branch officials are to be investigated by the Justice Department and its appointed head, the Attorney General. Furthermore, Attorney General Reno has, until the present, complied with the view she expressed before Congress by appointing independent counsels to investigate Executive Branch officials on four separate occasions. Given the Attorney General's statements and pattern of behavior, and Congress' detrimental reliance thereon, Attorney General Reno is estopped from refusing to appoint an independent counsel in the instant case.

I. NATIONAL SECURITY INFORMATION WITHHELD FROM THE PRESIDENT AND SECRETARY OF STATE

8. The Federal Election Campaign Act provides that "it shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value . . . in connection with an election to any political office. . . ." 2 U.S.C. 441e(a). A "foreign national" is defined as someone who is not a citizen of the United States and who is not lawfully admitted for permanent residence in the United States. 2 U.S.C. 441e(b).

9. *National Security Information Withheld from the President.* On June 3, 1996, the F.B.I. briefed two members of the White House National Security Council (the "N.S.C.") on intelligence of Chinese Government efforts to buy influence in the United States government through political contributions. Also in June, the F.B.I. provided individual, classified briefings to 6 members of Congress, warning them that they may have been targeted by the Chinese Government to be the recipients of illegal campaign contributions.

10. President Clinton was not informed of the F.B.I. briefing to the N.S.C. and became aware of it only after reading a February, 1997 report in the Washington Post. After learning about the June briefing, President Clinton explained on March 10, 1997, that the two N.S.C. officials had not reported the F.B.I. briefing to their superiors because the F.B.I. agents involved, "asked that they [the N.S.C. officials] not share the briefing, and they honored the request." Also on March 10, White House Press Secretary Michael McCurry stated that the two N.S.C. officials who received the briefing were "adamant in recalling specifically that they were urged by [by the FBI] not to disseminate the information outside the briefing room."

11. President Clinton further stated on March 10 that such national security information should not have been withheld from him. The President stated, "I should have known. No, I did not know. If I had known, I would have asked the N.S.C. and the chief of staff to look at the evidence and make whatever recommendations were appropriate."

12. *National Security Information Withheld from the Secretary of State.* On February 18, 1997 White House Counsel Charles Ruff wrote to Deputy Attorney General Jamie Gorelick asking for information about the possible involvement of Chinese officials and citizens in a purported plan to make illegal contributions to American political campaigns. He sought this information in order to brief Secretary of State Madeline Albright, who was preparing to make an official visit to China in late February. Mr. Ruff's letter stressed that he did not want information that might interfere with "any criminal investigation."

13. The New York Times reported (March 25, 1997) that F.B.I. and Justice Department officials prepared a thorough response to Mr. Ruff's letter but, at the request of F.B.I. Director Freeh, this response was never sent. As a result, Secretary of State Albright was denied critical information at a time when she was embarking upon a diplomatic mission to Beijing.

14. In response to this decision to withhold this information from the Secretary of State, President Clinton stated on March 26, 1997 that, "I think everyone understands that there are significant national security issues at stake here and that the White House, the National Security Council, and the Secretary of State, as well as the President, need to know when the national security issues are brought into play."

15. On April 30, 1997, Attorney General Janet Reno appeared before the Senate Judiciary Committee for an oversight hearing. At this hearing, Senator Arlen Specter questioned the Attorney General about these reports that the FBI and the Justice Department had withheld national security information from President Clinton and the Secretary of State because the President is a subject in a criminal investigation. In response, Attorney General Reno acknowledged that Director Freeh had told National Security Advisor Sandy Berger that "he [Freeh] would not go into certain matters because of the ongoing criminal investigation."

16. In an op-ed piece published in the Washington Post on May 22, 1997, Senator Arlen Specter noted the inconsistency in Attorney General Reno's position: "Since the facts of the underlying investigation are sufficiently serious in the judgement of the Attorney General to deny the president 'significant national security' data, how can they possibly be insufficiently 'credible' and 'specific'

to justify not appointing independent counsel?"

II. CRIMINAL VIOLATIONS

17. There is specific and credible evidence that the President and Vice President have committed criminal violations of the Federal Election Campaign Act ("FECA"). The Attorney General has therefore violated the letter and the spirit of the Independent Counsel Statute by failing to appoint an independent counsel to investigate these allegations.

A. *Illegal Coordination of Expenditures of DNC Money by President Clinton*

18. There is specific and credible evidence that President Clinton committed a criminal violation of FECA by personally drafting, editing, and planning a series of television advertisements paid for by Democratic National Committee soft money.

19. "Hard money" is money which is raised pursuant to the caps, restrictions, and reporting requirements of FECA. Hard money can be spent in connection with a specific campaign for Federal office. "Soft money" is money that is not governed by the restriction of FECA and can therefore be raised in unlimited amounts. Soft money cannot be spent in connection with specific campaigns for Federal office and must be used for general party building activities.

20. As one of the conditions for receiving \$61.8 million in Federal funding for their 1996 general election campaign, President Clinton and Vice President Gore signed a letter to the Federal Election Commission in which they pledged that in exchange for the Federal funding they would not spend any additional money on their campaign.

21. After signing the pledge, President Clinton actively participated in raising funds for the DNC beyond these limits. According to Federal Election Commission records, the President helped raise \$27 million in hard and soft money for the DNC through the White House coffees, and an additional \$6 million in hard and soft money for the DNC from overnight guests in the Lincoln Bedroom.

22. President Clinton also actively participated in spending DNC money through close coordination with the DNC of the expenditures made on a major television advertising campaign.

23. Former White House Chief of Staff Leon Panetta, appearing on the March 9, 1997 edition of NBC's "Meet the Press," acknowledged that President Clinton helped direct the expenditure of approximately \$35 million in DNC soft money on television campaign commercials.

24. Former Presidential advisor Richard Morris, in his book *Behind the Oval Office* (p. 144), describes his first-hand knowledge of the coordination which took place between President Clinton and the DNC: "[T]he President became the day-to-day operational director of our TV-ad campaign. He worked over every script, watched each ad, ordered changes in every visual presentation, and decided which ads would run when and where. He was as involved as any of his media consultants were. The ads became not the slick creations of admen but the work of the president himself. . . . Every line of every ad came under his informed, critical, and often meddlesome gaze. Every ad was his ad."

25. Section 441a(a)(7)(B)(I) of FECA states that: "Expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a

contribution to such candidate." By this standard, all of the money spent by the Democratic National Committee ("DNC") on express advocacy commercials, as defined under FECA, that were designed, edited and/or purchased in consultation and co-ordination with the Clinton campaign and the President personally were contributions to the Clinton campaign under FECA. The President knowingly violated FECA by (1) coordinating the contributions by the DNC and (2) accepting and expending contributions in violation of his commitment to limit expenditures to the public financing.

26. Violations of FECA are criminal violations when they are done "knowingly and willfully" and involve contributions or expenditures aggregating \$2,000 or more. 2 U.S.C. 437g(d)(1)(A).

27. The Federal Election Commission has defined express advocacy ads as: "Communications using phrases such as 'vote for President,' 'reelect your Congressman,' 'Smith for Congress,' or language which, when taken as a whole and with limited reference to external events, can have no other reasonable meaning that to urge the election or defeat of a clearly identified federal candidate." 11 CFR 100.22.

28. On April 30, 1997, Attorney General Janet Reno appeared before the Senate Judiciary Committee for an oversight hearing. At this hearing, Senators Arlen Specter and Fred Thompson questioned the Attorney General about the coordination between the DNC and the President. The Attorney General acknowledged that coordination between President Clinton and the DNC "was presumed at the time by the FEC." The Attorney General further stated that "it would be the content" which controlled whether or not the law was violated, thereby acknowledging that such coordination would be illegal if the advertisements so produced were advocacy ads.

29. Senator Specter then asked Attorney General Reno the following question:

Attorney General Reno . . . I ask you if this advertisement . . . can be anything other than express advocacy. . . . It reads as follows:

'Head Start, student loans, toxic cleanup, extra police, anti-drug programs—Dole-Gingrich wanted them cut. Now, they're safe, protected in the 1996 budget because the president stood firm. Dole-Gingrich—deadlock, gridlock, shutdowns. The president's plan—finish the job, balance the budget, reform welfare, cut taxes, protect Medicare. President Clinton gets it done. Meet our challenge, protect our values.'

Can that possibly be language taken as a whole which does anything other than urge the election expressly of President Clinton?

30. In response to this question, the following exchange took place between Attorney General Reno and Senator Specter:

RENO: Based on the processes that have been established by the Department of Justice, the MOU with the elections commission, this is a situation in which we would not find specific and credible evidence that a crime had been committed that would justify triggering the statute.

SPECTER: Well, Attorney General Reno, that is conclusory. A critical step along the way is your legal judgment as to whether that is express advocacy.

RENO: At this point, the career lawyers who have worked on this issue, who are familiar with the election law, I have met with them. We have discussed it, and they do not believe that it could support a prosecution.

SPECTER: Are you familiar with these ads, Attorney General Reno?

RENO: I have not seen the ads. I have read what could be called the transcripts of the ads.

SPECTER: Well, can you say—listen, I don't have to make a point that you're the attorney general. You have career lawyers. Have you gone over these ads with them specifically to ask them?

RENO: I have specifically gone over the ads. I have read the ads and have discussed the ads and discussed what is involved.

SPECTER: And have your career lawyers told you that the ad I just read to you is not express advocacy?

RENO: What they have told me is that based on their understanding of the law, their structure of the election law, that we could not sustain a prosecution.

SPECTER: Well, I understand your conclusion. But my question to you is a lot more specific than that: Have you gone over that ad with your career prosecutors, and they told you that was issue advocacy . . .

RENO: No, I have not.

SPECTER: Well, Attorney General Reno, I would like to submit these to you, and I would like you to give us your judgment as to whether they are express advocacy or not—your judgment on them. . . . And this is not a judgment for the Federal Election Commission alone. This is jurisdiction for the attorney general of the Department of Justice, because the Federal Election Commission statute has criminal penalties.

31. Senator Arlen Specter wrote to Attorney General Reno on May 1, 1997 requesting a legal judgment as to whether the ads in question constitute express advocacy. A true and correct copy of the May 1, 1997 letter is attached as Exhibit . All of the contents of the attached letter are hereby incorporated by reference as part of the factual and evidentiary basis for the relief sought in this complaint. Senator Specter included in his letter the following texts of the DNC advertisements:

'American values. Do our duty to our parents. President Clinton protects Medicare. The Dole/Gingrich budget tried to cut Medicare \$270 billion. Protect families. President Clinton cut taxes for millions of working families. The Dole/Gingrich budget tried to raise taxes on eight million of them. Opportunity. President Clinton proposed tax breaks for tuition. The Dole/Gingrich budget tried to slash college scholarships. Only President Clinton's plan meets our challenges, protects our values.

'60,000 felons and fugitives tried to buy handguns—but couldn't—because President Clinton passed the Brady Bill—five-day waits, background checks. But Dole and Gingrich voted no. One hundred thousand new police—because President Clinton delivered. Dole and Gingrich? Vote no, want to repeal 'em. Strengthen school anti-drug programs. President Clinton did it. Dole and Gingrich? No again. Their old ways don't work. President Clinton's plan. The new way, meeting our challenges, protecting our values.

'America's values. Head Start. Student loans. Toxic cleanup. Extra police. Protected the budget agreement; the president stood firm. Dole, Gingrich's latest plan includes tax hikes on working families. Up to 18 million children face health care cuts. Medicare slashed \$167 billion. Then Dole resigns, leaving behind gridlock he and Gingrich created. The president's plan: Politics must wait. Balance the budget, reform welfare, protect our values.

'Head Start. Student Loans. Toxic Cleanup. Extra police. Anti-drug programs. Dole,

Gingrich wanted them cut. Now they're safe. Protected in the '96 budget—because the president stood firm. Dole, Gingrich? Deadlock. Gridlock. Shutdowns. The president's plan? Finish the job, balance the budget. Reform welfare. Cut taxes. Protect Medicare. President Clinton says get it done. Meet our challenges. Protect our values.

'The President says give every kid a chance for college with a tax cut that gives \$1,500 a year for two years, making most community colleges free, all colleges more affordable . . . And for adults, a chance to learn, find a better job. The president's tuition tax cut plan.

'Protecting families. For million of working families, President Clinton cut taxes. The Dole-Gingrich budget tried to raise taxes on eight million. The Dole-Gingrich budget would have slashed Medicare \$270 billion. Cut college scholarships. The president defended our values. Protect Medicare. And now, a tax cut of \$1,500 a year for the first two years of college. Most community colleges free. Help adults go back to school. The president's plan protects our values.'

32. By letter dated June 19, 1997, Attorney General Reno refused to respond to Senator Specter's request and instead referred the request to the Federal Election Commission ("FEC"). A true and correct copy of the June 19, 1997 letter is attached as Exhibit . All of the contents of the attached letter are hereby incorporated by reference as part of the factual and evidentiary basis for the relief sought in this complaint. By letter dated June 26, 1997, the FEC responded that it would not respond to Senator Specter's inquiry because the letter was not in the form of a formal complaint to the Commission. A true and correct copy of the June 26, 1997 letter is attached as Exhibit . All of the contents of the attached letter are hereby incorporated by reference as part of the factual and evidentiary basis for the relief sought in this complaint.

33. The President conceded that these DNC ads were advocacy advertisements intended to further his candidacy in remarks he made at a December 7, 1995 DNC luncheon at the Hay Adams Hotel in Washington. The President said the following in remarks which were captured on videotape: "Now we have come way back. . . . But one of the reasons has been . . . we have been running these ads, about a million dollars a week. . . . So I cannot overstate to you the impact that these paid ads have had in the areas where they've run. Now we're doing better in the whole country. . . . [I]n areas where we've shown these ads we are basically doing ten to fifteen points better than in areas where we are not showing them. . . . And then we realized that we could run these ads through the Democratic Party which meant that we could raise money in twenty and fifty and hundred thousand dollar lots, and we didn't have to do it all in thousand dollars and run down—you know—what I can spend which is limited by law.

34. The facts outlined above constitute sufficient specific and credible evidence to make a prima facie case that the President committed criminal violations of FECA through the knowing and wilful coordination of the expenditure of DNC soft money. The Attorney General has therefore violated the letter and the spirit of the Independent Counsel statute by failing to appoint an independent counsel to investigate these allegations.

B. Conspiracy to Violate and Evade the Campaign Finance Laws.

35. 18 U.S.C. 371 provides that a conspiracy to commit an offense against the United

States is a criminal offense punishable by up to 5 years in prison. Participation in a conspiracy to violate the Federal campaign finance laws is therefore a criminal violation.

36. After the Democrats lost control of both houses of Congress in the 1994 elections, President Clinton and his associates realized that in order to win reelection in 1996, the Clinton campaign would need to raise large sums of money. President Clinton's former senior advisor, George Stephanopoulos, wrote in Newsweek (March 10, 1997) that President Clinton's reelection would "take cash, tons of it, and everybody from the President on down knew it. So money became a near obsession at the highest levels. We pulled out all the stops: overnights at the White House, coffees, intimate dinners at Washington hotels, you name it."

37. As the events detailed below reveal, "pulling out all of the stops" included ignoring the Federal election law. Accordingly, the White House plan to aggressively pursue campaign contributions was, in practice, a conspiracy to evade and violate the Federal election laws.

38. The acts detailed below were all acts in furtherance of this conspiracy. There is specific and credible evidence that President and Vice President participated in this conspiracy by trading access to the President, Vice President and other Executive Branch officials for political contributions, trading access to the White House for political contributions, engaging in fundraising activities from Federal property, granting public office for political contributions, and soliciting campaign contributions from illegal sources. Use of the White House for Fundraising—The May 1 Coffee

39. President Clinton personally engaged in fundraising activities from the executive offices of the White House. On April 29, 1997, the Democratic National Committee ("DNC") sent a memorandum to President Clinton which identified five individuals invited to attend a May 1 coffee at the White House. The following personal note is typed at the top of the memo, "Mr. President. . . the five attendees of this coffee are \$100,000 contributors to the DNC." In addition, there is a notation on the first page of the memo which reads, "President has seen, 5/1/96." A true and correct copy of the April 29, 1997 memorandum is attached hereto as Exhibit. All of the contents of the attached memorandum are hereby incorporated by reference as part of the factual and evidentiary basis for the relief sought in this complaint.

40. On May 1, 1996, President Clinton held a coffee in the Oval Office which was attended by the five individuals listed in the DNC memo. Federal Election Commission ("FEC") filings show that within one week of the coffee, four of the five attendees (Peter Mathias, Samuel Rothberg, Barrie Wigmore, and Robert Menschel) had contributed \$100,000 each to the DNC. A true and correct copy of a printout from the FEC database of contributors is attached hereto as Exhibit . All of the contents of the attached printout are hereby incorporated by reference as part of the factual and evidentiary basis for the relief sought in this complaint.

Use of the White House for Fundraising—Overnights in the Lincoln Bedroom

41. President Clinton used the opportunity to spend the night at the White House as a tool to raise funds from large contributors. The overnights in question were arranged by the Democratic National Committee, not the President, and thus do not fall into the category of the President using his residence to entertain friends.

42. White House records indicate that between 1993 and 1996, 178 individuals who were not personal friends of the President or First Family spent the night at the White House. These 178 individuals contributed a total of over \$5 million to the DNC during the '96 election cycle. A true and correct copy of the list of 178 overnight guests provided by the White House to the Senate Governmental Affairs Committee is attached hereto as Exhibit . All of the contents of the attached list are hereby incorporated by reference as part of the factual and evidentiary basis for the relief sought in this complaint.

43. The Senate Governmental Affairs Committee obtained a list of the dates on which 51 of these 178 individuals spent the night in the White House. Of these 51 individuals, 49 contributed a total of over \$4 million to the DNC during the 1996 election cycle. Furthermore, of these 38 families represented by these 51 individuals, 37 families, or 98%, contributed to the DNC during the 1996 election cycle. 21 of the 38 families, or over 50% percent, contributed a total of \$900,000 to the DNC within one month of their stay at the White House. A true and correct copy of this list of 51 overnight guests is attached hereto as Exhibit . All of the contents of the attached list are hereby incorporated by reference as part of the factual and evidentiary basis for the relief sought in this complaint.

The Solicitation of R. Warren Meddoff

44. Appearing before the Senate Governmental Affairs Committee on September 19, 1997, Mr. Warren Meddoff testified to the facts set forth in paragraphs 35, 36 and 37 below.

45. At a fund-raising dinner on October 22, 1996 at the Biltmore Hotel in Coral Gables, Florida, Mr. Meddoff handed one of his business cards to President Clinton with the following message written on the back of the card, "I have an associate that it interested in donating \$5 million to your campaign."

46. After reading this message, the President stopped to speak with Mr. Meddoff and stated that someone from his staff would contact him. Two days later, on October 24, the President's Deputy Chief of Staff, Mr. Harold Ickes, called Mr. Meddoff and left a message on his answering machine. On October 26, Mr. Ickes called Mr. Meddoff again, this time from Air Force One, and discussed the possibility that an associate of Mr. Meddoff would contribute as much as \$55 million to the DNC over the course of the year.

47. On October 29 or 30, Mr. Ickes called Mr. Meddoff again and asked for an immediate contribution of \$1.5 million within 24 hours. On the next morning, Mr. Ickes sent Mr. Meddoff a fax with detailed instructions on where to send the money. Mr. Ickes later called Mr. Meddoff and requested that he shred the fax.

Mr. Roger Tamraz's Contributions

48. Appearing before the Senate Governmental Affairs Committee on September 18, 1997, Mr. Roger Tamraz testified that he gave a total of \$300,000 in contributions to the DNC and state Democratic parties during the 1996 campaign. On March 28, 1996, at Mr. Tamraz's request, the DNC's Richard Sullivan drafted a memorandum to Mr. Tamraz listing the Democratic entities to which Mr. Tamraz had contributed and the amounts he had contributed to each entity as of that date. A true and correct copy of the March 28, 1996 memorandum is attached hereto as Exhibit . All of the contents of the attached memorandum are hereby incorporated by reference as part of the factual and evi-

dentiary basis for the relief sought in this complaint.

49. In his September 18 testimony, Mr. Tamraz stated that "the only reason" he contributed this money was to gain access to the President and senior government officials. Mr. Tamraz was promoting a plan to build an oil pipeline from the Caspian Sea region of Central Asia to the Mediterranean and was hoping to receive assistance from the Federal government.

50. Mr. Tamraz further testified that, following this donation, Mr. Tamraz was invited to six social functions at the White House. At one of these events, he spoke to President Clinton briefly about the proposed pipeline. Asked whether or not he got his "money's worth" for the \$300,000 he gave, Mr. Tamraz replied, "I think next time I'll give \$600,000."

51. Appearing before the Senate Governmental Affairs Committee on September 17, 1997, Ms. Sheila Heslin, a former official with President Clinton's National Security Council, testified that she was concerned about Mr. Tamraz's "shady reputation" and advised the White House not to agree to any formal policy meetings with him.

52. Ms. Heslin further testified that she received calls to pressure her to drop her opposition to Roger Tamraz from Don Fowler of the Democratic National Committee, Jack Carter of the Department of Energy, and a CIA officer referred to publicly as "Bob of the CIA." Ms. Heslin testified, for example, that Jack Carter told her that "he [Mr. Tamraz] has already given \$200,000, and if he got a meeting with the President, he would give the DNC another \$400,000." When Ms. Heslin persisted in her opposition, Mr. Carter told her not to be "such a Girl Scout."

Mr. John Huang in the Commerce Department and the DNC

53. On July 18, 1994, John Huang began to serve as the Deputy Assistant Secretary for International Trade and Economic Policy at the U.S. Department of Commerce. Huang's supervisor at the Commerce Department, Commerce Undersecretary Jeffrey Garten, found Huang "totally unqualified" for his position and limited his activities to administrative duties.

54. Prior to working at the Commerce Department, John Huang had been the chief U.S. representative of the Lippo Group. The Lippo Group is a multi-billion dollar firm based in Indonesia with large investments in the Far East and China. The Lippo Group is controlled by Mochtar and James T. Riady, longtime friends and financial backers of President Clinton dating back to his days as governor of Arkansas.

55. The Lippo Group has extensive investments and contacts throughout China and is currently involved in dozens of large-scale joint ventures in China, including construction and development of apartment complexes, office buildings, highways, ports, and other infrastructure. Appearing before the Senate Governmental Affairs Committee on July 15, 1997, Mr. Thomas Hampsen, president of a business research and investigation firm, testified that "the record is very clear that the Lippo Group has shifted its strategic center from Indonesia to the People's Republic of China." Mr. Hampsen noted that Lippo's principal partner in China is "China Resources," a company wholly owned by the Chinese Government. Mr. Hampsen further testified that "the People's Republic of China uses China Resources as an agent of espionage, economic, military, and political."

56. Documents from the Lippo Group and its subsidiaries show that, upon leaving the

Lippo Group for a much lower paying job at the Commerce Department, Huang received a bonus of over \$700,000. A true and correct copy of the Lippo Group documents detailing John Huang's bonus are attached hereto as Exhibit . All of the contents of the attached documents are hereby incorporated by reference as part of the factual and evidentiary basis for the relief sought in this complaint.

57. Records from the U.S. Secret Service show that during his tenure at the Commerce Department, and despite the fact that he was a relatively low level functionary there, Huang made 67 visits to the White House. A true and correct copy of a list of the dates on which the visits took place and, where available, the visitee is attached hereto as Exhibit . All of the contents of the attached list are hereby incorporated by reference as part of the factual and evidentiary basis for the relief sought in this complaint.

58. While he was at the Commerce Department, Huang was given top secret security clearance. Appearing before the Senate Governmental Affairs Committee on July 16, 1997, Mr. John H. Dickerson, a CIA agent who handled issues relating to the Commerce Department, testified that he gave John Huang 37 confidential intelligence briefings in which he showed Huang hundreds of confidential documents. Mr. Dickerson further testified that he gave Mr. Huang 12 finished intelligence reports—10 classified "secret" and 2 classified "confidential"—which Mr. Huang kept in his possession until the end of his tenure at the Commerce Department. Mr. Dickerson further stated that Huang had a particular interest in China and Taiwan.

59. Appearing before the Senate Governmental Affairs Committee on July 17, 1997, Mr. John H. Cobb, an attorney with the staff of the Governmental Affairs Committee, testified that Mr. Huang had over 300 contacts (phone conversations, faxes and meetings) with the Lippo Group and Lippo-related individuals during his tenure at the Commerce Department. Many of these calls were made from his Commerce Department office. In addition, other calls were made from the offices of Stephen's, Inc., a Little Rock-based investment bank with an office across the street from the Commerce Department, where Huang regularly went to send and receive faxes and make phone calls.

60. Shortly after he left the Commerce Department in December, 1995, John Huang was appointed Finance Vice-Chairman of the DNC. During his 9 months at the DNC, he raised \$3.4 million, nearly half of which was returned as illegal, inappropriate or suspect.

John Huang's Solicitation of Funds in the Presence of the President in the White House

61. In his appearance before the Senate Governmental Affairs Committee on September 16, 1997, Mr. Karl Jackson, a former Assistant to the Vice President for National Security Affairs from 1991 to 1993, testified that Mr. John Huang solicited money in front of and within hearing distance of the President in the White House. Mr. Jackson was present at a coffee held in the Map Room of the White House on June 18, 1996 at which the President, John Huang, and eleven others were present. Mr. Jackson testified that after everyone had taken their seats and were listening to opening comments, Mr. Huang stood up and said, "Elections cost money, lots and lots of money, and I am sure that every person in this room will want to support the re-election of President Clinton."

62. A photograph taken of all of the attendees of the June 18 coffee at their seats demonstrates that Mr. Jackson, who heard

Mr. Huang clearly, sat four seats away from Mr. Huang. The President was seated next to Mr. Jackson and only three seats away from Mr. Huang. The President did not object to Mr. Huang's comments or disassociate himself from them. A true and correct copy of the photograph and a legend are attached hereto as Exhibit . All of the contents of the attached photograph and legend are hereby incorporated by reference as part of the factual and evidentiary basis for the relief sought in this complaint.

Mr. Wang Jun and the Possible Laundering of Foreign Contributions

63. Mr. Wang Jun is the chairman of the state-owned China International Trade and Investment Corp. ("CITIC"), a \$21 billion conglomerate. One of CITIC's subsidiaries, Poly Technologies, is one of Beijing's leading weapons companies and has been tied to an attempt to smuggle \$4 million worth of AK-47s into the United States. Wang Jun is the son of Wang Zing, who was the Vice President of China.

64. In a deposition taken by the Senate Governmental Affairs Committee on June 18, 1997, Ernest Green, a managing director of the Washington office of Lehman Brothers investment bank, stated that he had written a letter to Wang Jun inviting him to the United States. At the time, Lehman Brothers was competing for underwriting business in the vastly expanding Chinese market.

65. On February 5, 1996, a copy of Wang Jun's bio was faxed to the DNC from Lehman Brothers' offices. A true and correct copy of the fax of Wang Jun's bio received by the DNC is attached hereto as Exhibit . All of the contents of the attached fax are hereby incorporated by reference as part of the factual and evidentiary basis for the relief sought in this complaint.

66. On February 6, 1996, Wang Jun attended a coffee with President Clinton at the White House. On the morning of this coffee, Mr. Green contributed \$50,000 to the DNC. A true and correct copy of the check signed by Mr. Green's wife, Phyllis Clause-Green, is attached hereto as Exhibit . All of the contents of the attached check are hereby incorporated by reference as part of the factual and evidentiary basis for the relief sought in this complaint.

67. In his June 18, 1996 deposition, Mr. Green testified that towards the end of February, he received a bonus of approximately \$50,000 from Lehman Brothers. Mr. Green had already received a bonus of \$114,961 on February 1, 1996. The grant of a \$50,000 bonus so quickly following Mr. Green's \$50,000 donation to the D.N.C. gives rise to the inference that Lehman Brothers, not Mr. Green, was the true source of the contribution to the DNC. Making contributions "in the name of another person" is prohibited by FECA. 2 U.S.C. 441f.

Vice President Gore and the Hsi Lai Buddhist Temple Fundraiser

68. Vice President Gore appeared at a fundraiser in the Hsi Lai Buddhist Temple in Los Angeles on April 29, 1996. The fundraiser at the Temple was illegal since the Temple is a tax-exempt institution which cannot engage in political activity. The Vice President has maintained that he did not know that the event at the Temple was a fundraiser.

69. There is evidence that Vice President Gore did know ahead of time that the Hsi Lai Temple event was a fundraiser. In a deposition taken by the Senate Governmental Affairs Committee on August 6, 1997, the Venerable Man-Ho, an administrative assistant at the Hsi Lai Buddhist Temple, stated

that on March 15, 1996, there was a meeting at the White House between Vice President Gore, Hsi Lai Temple Venerable Master Hsing Yun, John Huang, and Maria Hsia. The Los Angeles Times (9/5/97) has reported that Gore was invited to visit the Temple during this meeting. The involvement at the meeting of Huang (a DNC fundraiser) and Hsia (a long-time Gore fundraiser) should have suggested to Gore that the Temple event was planned as a fundraiser from the beginning. The presence of Huang and Hsia at the Temple when Gore arrived should have further suggested to Vice President Gore that this event was a fundraiser.

70. Following the March 15 meeting, Vice President Gore responded via e-mail to an aide (Kimberly H. Tilley) who inquired about whether the Vice President could attend a New York event the night before the April 29 Los Angeles trip. In his e-mail, Vice President Gore stated "If we have already booked the fundraisers, then we have to decline." This demonstrates that the Vice President knew that the Temple event was a fundraiser, since he used the plural term "fundraisers" and the only acknowledged fundraiser he attended on April 29 was a dinner at a home near San Jose. A true and correct copy of a print-out of the Vice President's e-mail message to Kimberly Tilley is attached hereto as Exhibit . All of the contents of the attached print-out are hereby incorporated by reference as part of the factual and evidentiary basis for the relief sought in this complaint.

71. The facts outlined above constitute sufficient specific and credible evidence to make a prima facie case that the President, Vice President, and other high-ranking executive branch officials conspired to violate the Federal campaign finance laws in order to raise large sums of money to spend on the 1996 presidential campaign. The Attorney General has therefore violated the letter and the spirit of the Independent Counsel Statute by failing to appoint an independent counsel to investigate these allegations.

Johnny Chung, Loral, Inc. and the Launching of American Satellites by China

72. On March 14, 1996, the White House announced that President Clinton had decided to transfer control over export licensing for communications satellites from the State Department to the Commerce Department. This decision makes it much easier for American companies to get permission to export their satellites to be launched by Chinese rockets. (The New York Times, 5/17/98). In February, 1998, the White House gave permission to Loral Space and Communications Ltd. to launch one of its satellites on a Chinese rocket. (The Washington Post, 5/17/98)

73. One of the parties that benefitted from the waivers and eased export restrictions is China Aerospace Corporation, a state-owned company with interests in satellite technology, missile sales and rocket launches. Contracts to launch American satellites are crucial to the financial viability of these ventures. (The New York Times, 5/15/98)

74. Democratic fundraiser Johnny Chung has told Department of Justice investigators that an executive from China Aerospace named Liu Chao-Ying gave him \$300,000 to donate to the Democrats' 1996 campaign. According to Mr. Chung, Ms. Liu told him that the money originated with Chinese military intelligence. Mr. Chung has stated that he funneled \$100,000 of this money into Democratic party coffers. (The New York Times, 5/16/98)

75. Liu Chao-Ying is a lieutenant colonel in China's People's Liberation Army and vice-

president of China Aerospace International Holdings, Ltd., the Hong Kong arm of China Aerospace Corporation. Ms. Liu's father, General Liu, was China's top military officer and a member of the Politburo of China's Communist party. (The New York Times, 5/15/98)

76. Johnny Chung brought Ms. Liu to two fundraisers attended by the President on July 22, 1996. The first fundraiser was a \$1,000 a plate affair at the Beverly Hilton. The second fundraiser was a \$25,000 per couple dinner at the home of a private donor. At the dinner, Ms. Liu had her picture taken with President Clinton. (The New York Times, 5/15/98)

77. Two American companies, Loral Space and Communications Ltd. and Hughes Electronic Corp., also benefited from the waivers and eased export restrictions on commercial satellites. These companies wanted permission to launch their satellites on Chinese rockets to cut costs and shorten the waiting period prior to launch. These companies repeatedly lobbied the White House to allow them to launch their satellites on Chinese rockets. (The New York Times, 5/17/98)

78. In 1996, a rocket carrying a \$200 million Loral satellite crashed upon launch from China. Following this crash, scientists from Loral and Hughes allegedly advised the Chinese on how to improve their guidance systems by sharing technology that had not been cleared for export. (The Washington Post, 5/17/98) A classified Pentagon report concluded that the technology transferred to the Chinese by these companies can be used to significantly improve the accuracy of China's long-range missiles aimed at the United States. (The Chicago Tribune, 4/13/98)

79. The Justice Department started a criminal investigation to determine if Loral and Hughes had illegally transferred technology to the Chinese. That investigation was still underway in February, 1998, when Hughes and Loral petitioned the White House for another waiver to launch a satellite from China. The Justice Department objected to this waiver, arguing that its ability to pursue its investigation would be severely hindered if the government allowed Loral and Hughes to return to China under the same arrangement they had allegedly abused two years earlier. The White House granted the waiver. (The Washington Post, 5/17/98)

80. According to an official familiar with this investigation, the White House decision, "just about killed a major investigation involving a very sensitive national security issue. On the one hand you have investigators and prosecutors needing to be taken seriously so they can gather information, and then on the other hand the White House is saying that suspicions . . . are not serious enough to keep these companies from going back and doing it all over again." (The Washington Post, 5/17/98)

81. Loral's Chief Executive Officer, Bernard L. Schwartz, was the single largest donor to the Democratic party in 1996. According to the Center for Responsive Politics, Mr. Schwartz gave \$632,000 in "soft money" donations to the DNC in advance of the 1996 elections. (The Washington Post, 5/17/98). According to the Center for Responsive Politics, Mr. Schwartz has given an additional \$421,000 to Democrats in the current election cycle. (The Washington Post, 5/6/98)

III. BEHAVIOR OF THE ATTORNEY GENERAL AND THE DEPARTMENT OF JUSTICE

A. Failure of the Justice Department's Campaign Finance Investigation

82. Attorney General Reno has repeatedly insisted that there is no need to appoint an

independent counsel to investigate the campaign finance activity during the 1996 presidential election because the Department of Justice's own Campaign Finance Task Force was conducting a professional and effective investigation. Yet in the two years it has been conducting its investigation, the Task Force has proved unable to handle this matter.

83. In March, 1996, it was revealed that Vice President Gore had solicited campaign contributions from his White House office.

84. For more than five months following Vice President Gore's public defense of his phone calls, Justice Department investigators did not review Vice President Gore's assertion that he acted legally in seeking these contributions from his White House office in 1995-96 and solicited only soft money.

85. On September 3, the Washington Post reported that more than \$120,000 raised by Vice President Gore through these phone calls had actually been deposited into legally restricted "hard money" accounts maintained by the DNC. This report was based on White House and DNC records that had been available to the public. Only after reading the report, Attorney General Reno ordered a 30-day review of the Vice President's phone calls, the first step in the legal procedure leading to appointment of an independent counsel.

86. On September 5, the Attorney General acknowledged that she learned of the deposits to hard money accounts from the press: "The first I heard of it was when I saw the article in the Washington Post It is my understanding that this is the first time the public integrity section learned of it, as well."

87. On September 20, the Justice Department announced that Attorney General Reno had decided to open a review of President Clinton's fund raising calls from the Oval Office. On September 22, the Washington Post reported that the records that convinced Attorney General Reno to open this review had been turned over to the Justice Department task force several months prior to the decision to open the review, but the Task Force had not examined the documents until that week. The delay in examination was attributed to confused document-handling procedures within the campaign finance task force.

88. On September 11, 1997, Attorney General Reno, FBI Director Freeh and CIA Director Tenet briefed the Senate Governmental Affairs Committee on some matters relating to the campaign finance investigation. At this briefing it was revealed that the Department of Justice had critical information in its files for two years relating to possible illegal contributions without advising the Governmental Affairs Committee without knowing it had the information in the first place.

89. Specifically, CIA Director Tenet advised the Committee that a particular individual (whose identity is confidential) who had been identified in many news accounts as a major foreign contributor to political campaigns and campaign committees, made these contributions as part of a plan of the government of China to buy influence in the United States government through political contributions. According to Senator Arlen Specter, FBI Director Freeh further advised the Committee that one of the reports upon which the briefing was based had been in the FBI's files for over two years, since September/October 1995, and a second report had been on file since January, 1997.

90. On September 16, 1997, Senator Arlen Specter made the following comments about

the September 11 briefing from the floor of the Senate: "In those briefings, Senators learned that the Department of Justice had critical information in its files for a long time on the issue of possible illegal foreign contributions without advising the Governmental Affairs Committee and, apparently, without knowing it had the information or acting on it. That again shows the necessity for Independent Counsel to be appointed to investigate the 1996 Federal campaign illegalities and irregularities."

91. These failures of the Justice Department Campaign Finance Task Force have been attributed in part to a policy, pattern and practice which prevented the task force from investigating the President, Vice President and other high level officials covered by the Independent Counsel Statute ("covered persons.")

92. On October 3, 1997, the Washington Post reported that Justice Department prosecutors determined that the law prohibited them from looking at the activities of "covered persons" unless presented with "specific" and "credible" allegations that such covered persons had committed a crime. This approach prevented the Justice Department prosecutors from focusing on or even interviewing senior administration officials, thus insuring that covered persons would be among the last implicated in any possible misdeeds. According to one Justice Department lawyer involved in the investigation, "You can't ask someone whether a covered person committed a crime." That approach and mindset demonstrated the DoJ Task Force could not and did not handle this matter thus calling for Independent Counsel.

93. The Act does not mandate such a passive investigatory approach. The Act requires "specific and credible" evidence of wrongdoing by covered persons before the Attorney General is required to appoint an independent counsel. Nowhere does the Act require "specific and credible evidence" of wrongdoing before the Department of Justice can investigate a covered person on its own.

94. This policy demonstrates that the Justice Department has simply ignored evidence of violations by covered persons and, contrary to its public pronouncements, has failed to conduct a competent investigation of the evidence that has been presented to it.

B. Estoppel of the Attorney General

95. In her May 14, 1993 opening statement before the Senate Committee on Governmental Affairs on the reauthorization of the Independent Counsel Statute, Attorney General Reno stated: "The reason that I support the concept of an independent counsel with statutory independence is that there is an inherent conflict whenever senior Executive Branch officials are to be investigated by the Department and its appointed head, the Attorney General. The Attorney General serves at the pleasure of the President. . . . It is absolutely essential for the public to have confidence in the system and you cannot do that when there is conflict or an appearance of conflict in the person who is, in effect, the chief prosecutor. There is an inherent conflict here, and I think that is why this Act is so important."

96. Commenting on the Independent Counsel Statute, Attorney General Reno, at the same May 14, 1993 reauthorization hearing, stated: "The Independent Counsel Act was designed to avoid even the appearance of impropriety in the consideration of allegations of misconduct by high-level Executive Branch officials and to prevent, as I have said, the actual or perceived conflicts of interest. The Act thus served as a vehicle to

further the public's perception of fairness and thoroughness in such matters, and to avert even the most subtle influences that may appear in an investigation of highly-placed Executive officials."

97. During most of her tenure in office, Attorney General Reno has interpreted the Act in a manner consistent with these statements. On seven previous occasions she sought appointment of independent counsels when presented with evidence of possible violations by covered officials:

A. On May 11, 1998, Attorney General Reno requested the appointment of an independent counsel to investigate allegations that Labor Secretary Alexis Herman accepted payments in return for directing clients towards a consulting firm operated by her friend and a colleague.

B. On February 11, 1998, Attorney General Reno requested the appointment of an independent counsel to investigate allegations that Interior Secretary Bruce Babbitt allowed contributions to the Democratic party to influence his policy decisions.

C. In November of 1996, Attorney General Reno requested the appointment of an independent counsel to investigate allegations that Eli Segal, head of the AmeriCorps program, raised illegal campaign contributions.

D. In July of 1995, Attorney General Reno requested the appointment of an independent counsel to investigate allegations that former Commerce Secretary Ron Brown improperly accepted a \$50,000 payment from a former business partner and then filed inaccurate financial disclosure statements.

E. In March of 1995, Attorney General Reno requested the appointment of an independent counsel to investigate allegations that former Housing and Urban Development Secretary Henry Cisneros misled the FBI about payments he made to his former mistress.

F. In September of 1994, Attorney General Reno requested the appointment of an independent counsel to investigate allegations that former Agriculture Secretary Mike Espy violated the law by accepting gifts from companies regulated by his Department.

G. In January of 1994, Attorney General Reno requested the appointment of an independent counsel to investigate President Clinton's Whitewater real estate venture.

98. Congress relied upon the Attorney General's statements and record when amending and then reauthorizing the Independent Counsel Statute subsequent to the hearing. Accordingly, no Senator saw a need to amend the statute to clarify or emphasize the requirement that independent counsel be appointed in circumstances such as those reflected in the facts recited above.

99. Given the Attorney General's statements and pattern of behavior, and Congress' detrimental reliance thereon, Attorney General Reno is estopped from refusing to appoint an independent counsel in the instant case.

C. Conflict of Interest

100. Section 591(c) of the Act provides that the Attorney General "may" conduct a preliminary investigation of any person whenever the Attorney General (1) receives specific and credible information which is "sufficient to constitute grounds to investigate" whether such person "may have violated" any Federal criminal law, and (2) determines that an investigation or prosecution of such person by the Department of Justice "may result in a personal, financial, or political conflict of interest."

101. The independent Counsel statute presumes that it would present a conflict of interest for the Attorney General to investigate the President or Vice President.

102. The Department of Justice campaign finance task force has indicted five individuals with close ties to the President and/or Vice President (as detailed below). Accordingly, the investigation of the five individual currently under indictment will inevitably involve the Justice Department in investigating the President and Vice President. In order to avoid the conflict of interest presented by such an investigation, the Attorney General should exercise her discretion under the Act and appoint an independent counsel.

Howard Glicker

Finance Vice Chairman of the DNC during the 1996 campaign.

Raised over \$2 million for the Democratic party during the 1996 campaign.

Made over 70 visits to the Clinton White House.

Served as Vice President Gore's Florida Finance Chairman during his 1988 Presidential bid.

Maria Hsia

Accompanied Vice President Gore on a trip to Taiwan paid for by a Buddhist organization in 1989.

Organized a \$250-a-plate Beverly Hills fund-raiser for Gore's 1990 Senate re-election campaign.

Helped organize April 29, 1996 fund-raising lunch at the Hsi Lai Buddhist Temple attended by Vice President Gore which raised \$140,000 for the DNC.

Yah Lin "Charlie" Trie

Owned a Chinese Restaurant in Little Rock, Arkansas, frequented by President Clinton during his tenure as Governor of Arkansas.

Raised \$640,000 for President Clinton's legal defense fund in 1995-96.

Raised \$645,000 for the Democratic party in 1995-96.

Made at least 23 visits to the Clinton White House.

Johnny Chung

Contributed \$366,000 to the DNC between August 1994 and August 1996.

Contributed \$50,000 to the DNC on March 9, 1995. Handed check to Hillary Clinton's Chief of Staff, Maggie Williams, at the White House.

Two days later, Mr. Chung and a delegation of six Chinese officials were admitted to watch President Clinton tape his weekly radio address.

Made at least 49 visits to the Clinton White House.

Pauline Kanchanalak

Raised \$679,000 for the Democratic Party and candidates.

Visited the Clinton White House 26 times. Appointed Managing Trustee of the DNC.

Recommended by the White House for a position on an executive trade policy committee.

D. Additional Facts relating to the Attorney General's Refusal to Appoint Independent Counsel

Letters to Attorney General Reno from the Senate and House Judiciary Committees and Others

103. On March 13, 1997, Senate Judiciary Committee Chairman Hatch and all Republican members of the Committee sent a letter to Attorney General Reno setting forth, in great detail, evidence of involvement by individuals and associations, including foreign interests, that point to potential involvement by senior Executive Branch officials. The letter also notes the "inherent

conflict of interest" in the Attorney General investigating the Executive Branch, and calls on the Attorney General to commence a preliminary investigation. A true and correct copy of the March 13, 1997 letter is attached as Exhibit —. All of the contents of the attached letter are hereby incorporated by reference as part of the factual and evidentiary basis for the relief sought in this complaint.

104. On April 14, 1997, the Attorney General responded by letter to Chairman Hatch that she would not initiate a preliminary investigation under the Act. A true and correct copy of the April 14, 1997 letter is attached hereto as Exhibit —. All of the contents of the attached letter are hereby incorporated by reference as part of the factual and evidentiary basis for the relief sought in this complaint.

105. On October 11, 1996 Senator John McCain wrote to the Attorney General requesting that she appoint an independent counsel. Senator McCain wrote to the Attorney General again on October 29, 1996 in a joint House-Senate letter. True and correct copies of the October 11, 1996 and October 29, 1996 letters are attached hereto as Exhibit — and —, respectively. The allegations contained in Exhibits — and — are incorporated herein by reference. All of the contents of the attached letters are hereby incorporated by reference as part of the factual and evidentiary basis for the relief sought in this complaint.

106. On September 3, 1997, House Judiciary Committee Chairman Hyde and all of the Republican members of the Committee sent a letter to Attorney General Reno setting forth, in great detail, the alleged wrongdoings of the Clinton Administration in the 1996 campaign. The letter requests that the Attorney General apply for the appointment of an independent counsel to investigate these matters. A true and correct copy of the September 3, 1997 letter is attached as Exhibit . All of the contents of the attached letter are hereby incorporated by reference as part of the factual and evidentiary basis for the relief sought in this complaint.

107. On November 13, 1997, House Judiciary Committee Chairman Hyde and a majority of the Republican members of the Committee sent a letter to Attorney General Reno setting forth, in great detail, the allegation that the U.S. Department of the Interior made policy changes in exchange for campaign contributions. The letter calls on Attorney General Reno to immediately request appointment of an independent counsel to investigate these allegations. A true and correct copy of the November 13, 1997 letter is attached as Exhibit . All of the contents of the attached letter are hereby incorporated by reference as part of the factual and evidentiary basis for the relief sought in this complaint.

The Preliminary Investigations and Failure to Appoint an Independent Counsel

108. On September 3, 1997, Attorney General Reno launched a preliminary investigation under The Act into allegations that Vice President Gore may have violated Federal law by making fund-raising telephone calls from his office in the White House.

109. On October 14, 1997, Attorney General Reno launched a preliminary investigation under The Act into allegations that President Clinton may have violated Federal law by making fund-raising telephone calls from the Oval Office.

110. On November 25, 1997, Senator Arlen Specter wrote to Attorney General Reno set-

ting forth in great detail the reasons why her focus on the issue of fund-raising telephone calls in both preliminary investigations was too limited. Senator Specter noted that there is "substantial evidence of wrongdoing which meets the specific and credible threshold in the Independent Counsel Statute" and cited five specific examples of issues other than the telephone calls which require appointment of independent counsel. A true and correct copy of the November 25, 1997 letter is attached as Exhibit . All of the contents of the attached letter are hereby incorporated by reference as part of the factual and evidentiary basis for the relief sought in this complaint.

111. On December 2, 1997, Attorney General Reno announced that she decided not to seek an independent counsel to investigate these allegations against the President and Vice President. On the same day, she formally advised the special panel of three judges who oversee the appointment of independent counsel that "there are no reasonable grounds" for further investigation.

112. On August 26, 1998, Attorney General Reno launched a preliminary investigation under The Act into allegations that Vice President Gore lied when he told investigators that he did not know that a percentage of the money he raised from the White House went into hard money accounts. The investigation was initiated after the Department of Justice received evidence that the Vice President had attended a meeting in which the division of such funds into both hard and soft money was discussed.

113. On November 24, 1998, Attorney General Reno announced that she decided not to seek an independent counsel to investigate the allegations that Vice President Gore lied to the campaign finance investigators. On the same day, she formally advised the special panel of three judges who oversee the appointment of independent counsels that "there are no reasonable grounds" for further investigation of the allegations against the Vice President.

114. On September 1, 1998, Attorney General Reno launched a preliminary investigation under The Act into allegations that former White House deputy chief of staff Harold Ickes lied to the Senate Governmental Affairs Committee about whether he made efforts to aid the Teamsters Union in exchange for campaign contributions.

115. On November 30, 1998, at the end of the 90-day preliminary investigation, Attorney General Reno decided to delay her decision whether to appoint an independent counsel to investigate Harold Ickes. On that date, Attorney General Reno requested and received from the special three judge panel a 60-day extension of the preliminary investigation into Ickes.

Rejection of Advice from Top Investigators to Appoint an Independent Counsel

116. In deciding not to appoint an independent counsel, Attorney General Reno rejected the advice that had been given to her by two individuals she had placed at the top of the Justice Department's campaign finance investigation: Louis Freeh and Charles LaBella.

117. On October 15, 1997, Attorney General Reno testified before the House Judiciary Committee that she had given FBI Director Louis Freeh a leading role in the Justice Department's campaign finance inquiry and that no avenues of investigation would be closed without Freeh's approval.

118. On December 9, 1997, Director Freeh testified before the House Committee on Government Reform and Oversight that he

had recommended to Attorney General Reno that she appoint an independent counsel with respect to the campaign finance investigation. It was later disclosed that in a 22-page memorandum to the Attorney General explaining his conclusions, Director Freeh concluded that, "It is difficult to imagine a more compelling situation for appointing an independent counsel."

119. In September, 1997, Attorney General Reno appointed Charles G. LaBella to direct the Justice Department's campaign finance investigation task force.

120. On May 3, 1998, Mr. LaBella issued a statement confirming that he had recommended to Attorney General Reno that she appoint an independent counsel to investigate whether President Clinton and Vice President Gore violated the law by making telephone solicitations from their offices.

121. On July 16 or 17, 1998, Mr. LaBella delivered a detailed report to Attorney General Reno arguing that she had no alternative but to seek an independent prosecutor to investigate political fund-raising abuses in President Clinton's reelection campaign. In particular, Mr. LaBella concluded that there is enough specific and credible evidence of wrongdoing by high-ranking officials to trigger the mandatory provisions of the Independent Counsel statute. The report was based on all of the evidence gathered by the Department's task force including confidential evidence and grand jury testimony not available to the public.

122. September, 1997, Attorney General Reno appointed James V. DeSarno Jr. to serve as special F.B.I. agent in charge of the campaign finance investigation task force.

123. On August 4, 1998, Mr. DeSarno testified before the House Committee on Government Reform and Oversight that he agreed with the conclusion in Mr. LaBella's memo that Attorney General Reno has no alternative but to seek an independent counsel to investigate campaign finance violations.

Reliance upon Advice from Secondary Advisors

124. In deciding not to appoint independent counsel, Attorney General Reno relied primarily upon the advice of two individuals further removed from the investigation than Freeh, LaBella and DeSarno: Lee Radek and Robert Litt.

125. Robert S. Litt has played an active role in the meetings in which Attorney General Reno has concluded not to appoint Independent Counsel. Mr. Litt was nominated to be chief of the Criminal Division of the Department of Justice in 1995, but was never confirmed for this position. He currently serves as Principal Associate Deputy Attorney General and is the de facto head of the criminal division.

126. Prior to moving to the Department of Justice, Mr. Litt was the law partner of David Kendall, the President's private attorney.

127. Lee Radek is a career bureaucrat who currently serves as chief of the Criminal Division's public integrity section. Mr. Radek and the lawyers working under him have been among the strongest advocates for keeping the inquiry inside the Department of Justice. (New York Times, 12/11/97).

128. Mr. Radek has been openly critical of the independent counsel statute and has rejected the fundamental premise of the law—that the Department of Justice should not be in charge of investigating certain high officials in the executive branch. According to Mr. Radek, "The independent counsel statute is an insult. It's a clear enunciation by the legislative branch that we cannot be

trusted on certain species of cases." (New York Times, 7/6/97) Radek also complained that the Independent Counsel statute places his prosecutors in a no-win situation, "If we do very well in our investigation, we have to turn the case over to an independent counsel. If we don't find anything, then we're criticized for not making the case." (New York Times, 7/6/97)

Special Standing of the Senate and House Judiciary Committees to Sue for Enforcement of the Independent Counsel Statute

129. The Act provides that: "The Committee on the Judiciary of either House of the Congress, or a majority of majority party members or a majority of all non-majority party members of either such committee may request in writing that the Attorney General apply for the appointment of an independent counsel." 28 U.S.C. 592(g)(1).

130. The Attorney General must respond in writing to such request and report to the Committees whether she has begun or will begin a preliminary investigation of the matters with respect to which the request was made, and the reasons for her decision. 28 U.S.C. 592(g)(2).

131. This specific inclusion of the Judiciary Committees within the framework of the Act and the role granted these Committees thereunder is evidence that Congress intended to create procedural rights—including the right to sue for enforcement—in members of the Judiciary Committees.

132. Both the D.C. Circuit and the Ninth Circuit have made specific reference to the fact that members of the Judiciary Committees have been given a special oversight role within the scheme of the Act and each court has stated that this role is evidence that Congress intended to create broad procedural rights in the members of these Committees. See *Banzhaf v. Smith*, 737 F.2d 1167 (D.C. Cir. 1984) and *Dellums v. Smith*, 797 F.2d 817 (9th Cir. 1986).

FIRST COUNT (FOR A WRIT OF MANDAMUS)

133. Plaintiffs repeat and reallege all of the foregoing allegations in the Complaint as if set forth at length herein.

134. Defendant, Attorney General Reno, has been presented with specific and credible evidence pertaining to possible violations of criminal law by covered persons which is sufficient to create reasonable grounds to believe that further investigation is warranted.

135. Given this evidence, Attorney General Reno is required under the Act to make an application to the special division of the circuit court for appointment of an independent counsel.

136. Notwithstanding the duties imposed on her under the Act and repeated requests by Plaintiffs, the Attorney General has refused to apply to the special division of the circuit court for appointment of an independent counsel.

137. The failure of the Attorney General to apply for appointment of an independent counsel despite the evidence that has been presented to her is a violation of her mandatory duty to do so under the Act or, in the alternative, is a gross abuse of her discretion to do so under the Act.

138. The failure of the Attorney General to apply for appointment of an independent counsel injures the plaintiffs, who have requested that she do so in accordance with their special authority under the Act and who have supplied her with information sufficient to trigger such an appointment under the Administrative Procedures Act.

WHEREFORE, the Plaintiffs respectfully pray that the Court require the Defendant,

the Attorney General of the United States Janet Reno, to apply to the special division of the circuit court for the appointment of an independent counsel to investigate evidence that criminal violations may have occurred in the 1996 presidential campaign involving covered persons, including possibly the President and/or the Vice President.

SECOND COUNT (FOR A COURT ORDER UNDER THE ADMINISTRATIVE PROCEDURES ACT)

139. Plaintiffs repeat and reallege all of the foregoing allegations in the Complaint as if set forth at length herein.

140. Despite the specific and credible evidence that has been presented to her, the Attorney General has unlawfully withheld and unreasonably delayed applying for the appointment of an independent counsel.

141. The failure of the Attorney General to apply for appointment of an independent counsel injures the plaintiffs, who have requested that she do so in accordance with their special authority under the Act and who have supplied her with information sufficient to trigger such an appointment under the Act.

WHEREFORE, the Plaintiffs respectfully pray that the Court require the Defendant, the Attorney General of the United States Janet Reno, to apply to the special division of the circuit court for the appointment of an independent counsel to investigate evidence that criminal violations may have occurred in the 1996 presidential campaign involving covered persons, including possibly the President and/or the Vice President.

THIRD COUNT (FOR A COURT ORDER)

142. Plaintiffs repeat and reallege all of the foregoing allegations in the Complaint as if set forth at length herein.

143. The failure of the Attorney General to apply for the appointment of an independent counsel despite the specific and credible evidence that has been presented to her is a gross abuse of any discretion she may have to do so under the Act.

144. The failure of the Attorney General to apply for appointment of an independent counsel effectively blocks the proper and orderly administration of justice in the instant case.

145. The failure of the Attorney General to apply for appointment of an independent counsel injures the plaintiffs, who have requested that she do so in accordance with their special authority under the Act and who have supplied her with information sufficient to trigger such an appointment under the Act.

WHEREFORE, the Plaintiffs respectfully pray that the Court exercise its inherent power under common law to issue an order appointing an independent counsel to investigate evidence that criminal violations may have occurred in the 1996 presidential campaign involving covered persons, including possibly the President and/or the Vice President.

FOURTH COUNT (FOR SPECIFIC PERFORMANCE UNDER PROMISSORY ESTOPPEL)

146. Plaintiffs repeat and reallege all of the foregoing allegations in the Complaint as if set forth at length herein.

147. In her May 14, 1993 statement before the Senate Committee on Governmental Affairs on the reauthorization of the Independent Counsel Statute (quoted above), Attorney General Reno made statements which assured the Committee and the Senate that she shared their interpretation of the Independent Counsel Statute and that she understood her obligation to appoint an independent counsel in circumstances such as those reflected in the facts recited above.

148. On four prior occasions during her tenure in office, Attorney General Reno has applied for appointment of an independent counsel. This pattern of conduct further assured the Committee and the Senate that she understood her obligation to appoint an independent counsel in circumstances such as those recited in the facts above.

149. The member of the U.S. Senate relied upon Attorney General's statements and record when amending and then reauthorizing the Independent Counsel Statute subsequent to the hearing. Accordingly, no Senator saw a need to amend the statute to clarify or emphasize the requirement that independent counsel be appointed in circumstances such as those reflected in the facts recited above.

150. The failure of the Attorney General to apply for appointment of an independent counsel injures the plaintiffs, who have requested that she do so in accordance with their special authority under the Act and who have supplied her with information sufficient to trigger such an appointment under the Act.

WHEREFORE, the Plaintiffs respectfully pray that the Court exercise its power under the common law doctrine of promissory estoppel to issue an order appointing an independent counsel to investigate evidence that criminal violations may have occurred in the 1996 presidential campaign involving covered persons, including possibly the President and/or the Vice President.

Dated: December 1, 1998.

Respectfully submitted,

Attorney for Plaintiffs.

Mr. SPECTER. I thank the Chair for the extra time, and I yield the floor.

RECESS

The PRESIDING OFFICER. All time having expired, under the previous order, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:38 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. INHOFE).

ORDER OF PROCEDURE

The PRESIDING OFFICER. Under the previous order, the time until 3:15 shall be under the control of the Democratic leader.

The Senator from Vermont.

Mr. LEAHY. Mr. President, I yield such time as I may need under the time allotted to the distinguished Senator from South Dakota.

PATIENTS' BILL OF RIGHTS

Mr. LEAHY. Mr. President, it is interesting when you think of the debate we are in. Here we are as Americans in the richest and most powerful country the world has ever known. There is really no comparison to it. We have the most highly trained and capable health professionals of any nation. Our technology leads the way on the frontiers of medical science. People come from all over the world to train and to be

educated in medical science. But at that same time, millions of American families in our Nation with its first-class medical expertise are subject to second-class treatment because of the policies and practices of our health insurance system.

I have to ask, is it really beyond the ability of this great Nation to ensure access and accountability to help these families? Of course it is not. Is this an important enough problem that solving it should be a high priority for this body, the Senate? Of course it is.

Although the President and many of the Senators have done their utmost for years to encourage the Congress to act, I am afraid that the Republican leadership long ago decided that protection for those Americans insured through private managed care plans was just not a priority for us—this despite the fact that we have had calls from nonpartisan groups from every corner of the Nation. The Republican leadership has refused to schedule a full and reasonable debate to consider the vote on the Patients' Bill of Rights.

Certainly from my experience in the Senate it is clear that the only step left is, of course, to bring the Patients' Bill of Rights directly to the floor. I believe we should keep it there until the Republicans, who are in the majority, agree that it merits the priority consideration that we—and I believe most of the American people, Republican and Democrat—strongly believe it does.

I applaud Senator KENNEDY, Senator DURBIN, and many others for leading this vigilance to save the Patients' Bill of Rights. I commend the distinguished Senate Democratic leader, Mr. DASCHLE, for continuing to insist on a reasonable time agreement as he attempts to negotiate with our friends on the other side of the aisle.

I urge our friends in the Republican Party to make the Patients' Bill of Rights a high priority. Let's get on with the debate, vote it up or vote it down, and then go on to the other matters, things such as the agriculture appropriations bill and other business before us.

The Patients' Bill of Rights that we Democrats have presented reflects a fundamental expectation that Americans have about their health care. That expectation is that doctors—not insurance companies—should practice medicine.

To really sum up our Patients' Bill of Rights, we are saying that doctors—not insurance companies—should be the first decisionmakers in your health care. The rights that we believe Americans should have in dealing with health insurers are not vague theories; they are practical, sensible safeguards. You can hear it if you talk to anybody who has sought health care. You can hear it if you talk to anybody who provides

health care. I hear it from my wife, who is a registered nurse. I hear it from her experiences on the medical-surgical floors in the hospitals she has worked in. If you want to see how some of them would work in practice, come with me to Vermont. My state has already implemented a number of these protections for the Vermonters who are insured by managed care plans. I am proud Vermont has been recognized nationally for its innovation and achievements in protecting patients' rights.

I consistently hear from Vermonters who are thankful for the actions that the Vermont legislature has taken to ensure patients are protected. But I also hear from those who do not yet fall under these protections.

This Congress should waste not more time and instead make a commitment to the American people that we will fully debate the Patients' Bill of Rights. We must protect those Vermonters who are not covered under current state law. And we must act now to cover every other American who expects fair treatment from their managed care plan.

I am one of many in this body who firmly believe in the importance of this bill. I hope the leadership is listening and I hope they hear what we are saying. It is what Americans are saying.

As I stated at the beginning of this message, millions of American families in this Nation of first-class medical expertise are subject to second-class treatment because of the policies and practices of our health insurance system.

We have heard a lot of "our bill has this," and "their bill doesn't have that." Here are some of the facts. Our Patients' Bill of Rights will protect every patient covered by private managed care plans. And it offers protections that make sense, such as ensuring a patient has access to emergency room services in any situation that a "prudent layperson" would regard as an emergency, guaranteeing access to specialists for patients with special conditions, and making sure that children's special needs are met, including access to pediatric specialists when they need it.

Our Patients' Bill of Rights provides strong protections for women. It will provide women with direct access to their ob/gyn for preventive care. Through successful research, we have learned that regular screening can prevent breast cancer and cervical cancer in women of all ages.

We stress the importance of regular visits to ob/gyns to the women in our lives: our mothers, our wives, our daughters, and our sisters. But we make it difficult for these women to receive care by requiring referrals and putting other obstacles in the way of their care. Let us make sure women have the direct access they need and deserve.